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Court : Madhya Pradesh

Decided On : Nov-25-2014

Judge : Sujoy Paul

Appeal No. : Writ Petition No. 6541 of 2014

Appellant : Kamlesh and Others

Respondent : Urmila Devi

Judgement :

1. The petitioners/defendants No. 1, 2 and 3 have invoked the jurisdiction of this Court under Article 227 of the Constitution to challenge the order dated 15.9.2014 passed in Case No. 99/12 ED by first Civil Judge, Class-II, Jaura, District Morena.

2. The respondent/plaintiff filed the present suit for declaration and injunction. The petitioners filed their written statements. The trial Court framed issues on 5.12.2013. The plaintiff's witnesses filed their affidavits under Order 18 Rule 4 CPC. The Court below decided the application under Order 9 Rule 7 CPC filed by defendants No. 11 to 13. The said application was allowed on payment of Rs.2000/- as cost. Thereafter, on 9.9.2014, the defendants No. 1 to 3 and 11 to 13 prayed for time to cross-examine the plaintiff. The Court below by order dated 9.9.2014 allowed the adjournment to the counsel for the defendants No. 1 to 3 subject to payment of Rs.200/- as cost. It was made clear by the Court below that in absence of paying the cost, the right to cross-examination may be closed.

3. The matter was taken up on 15.9.2014. A plain reading of the order sheet Annexure P-1 shows that the learned counsel for the petitioners appeared on the said date and intended to proceed without paying the cost. It was objected by the counsel for the plaintiff. The petitioners/defendants No. 1 to 3's counsel stated before the Court below that he will not pay the amount of cost. He will either cross-examine the witnesses on behalf of all the defendants or will not undertake the exercise of cross-examination at all. He informed the Court that he has filed a revision before the High Court and within few days he will get the order. On more than one occasion, the petitioner's counsel stated before the Court below that he is not ready to pay the amount of cost. He is ready to cross-examine without paying the cost.

4. The Court below rejected the said contention and opined that no order of High Court is produced to show that the earlier orders are stayed. It is mentioned by Court below that payment of cost was the condition precedent for cross-examination. Since the petitioner has refused to pay the amount of cost, the Court below closed the right of cross-examination of the petitioners. In the petition, it is challenged on the ground that if cost was not paid, the Court below could have passed a separate order indicating the amount of cost which could be executable against the petitioners. It is further submitted that the Court below has erred in imposing the cost. Reliance is placed on Section 35-B of CPC to submit that if cost is not paid, it can be included in the judgment/decree. Lastly, it is pleaded that in similar circumstances, the Court below passed an order dated 13.10.2014 (Annexure P-6) and in the said case upon not depositing the cost, the amount of cost is directed to be included in the decree. Same course should have been followed in the present matter.

5. Before dealing with the points raised by the petitioners, it is apt to quote Section 35-B of CPC, which reads as under:-

"35-B. Costs for causing delay.-(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit--

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of--

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation.--Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

6. A careful reading of Section 35-B shows that it in no uncertain terms makes it clear in sub-section 1(b) that payment of cost on the next date shall be a condition precedent to the further proceedings of (a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs, (b) the defence by the defendant where the defendant was ordered to pay such costs. No doubt sub-section (2) provides that if cost ordered to be paid under sub-section (1) is not paid, it be included in the costs awarded in the decree passed in the suit. This is trite that a statute must be interpreted in a manner so that every part of statute is given full meaning and effect. This is also settled that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. (See

Nelson Motis v. Union of India, AIR1992 SC 1981). Section 35-B(1)(b) makes it clear that payment of cost is a 'condition precedent'. It is to be given full meaning otherwise the words "shall be a condition precedent" will become redundant or become dead letters. Section 35-B (1)(b), in my view, ensures that if cost is not paid, the right of plaintiff or defendant for further prosecution of suit/defence, as the case may be, will be taken away. Whereas, sub-section (2) ensures that if ultimately cost is not paid, it shall be included in the decree. Thus, the provision has two limbs: (1) sub-section (1) ensures that plaintiff/respondent, as the case may be, cannot prosecute their case unless cost is paid, whereas, sub-section (2) ensures that at the end, the cost is provided to the other side.

7. A plain reading of S.35-B makes it clear that payment of cost is a condition precedent to the further prosecution of defence by the defendant. If defendant does not ultimately pay the cost and his right of further prosecution is taken away because of non-payment of said cost, yet the Court while passing the judgment and decree will ensure that said amount is included in the decree. The effect and impact of Section 35-B (1)

(b) and sub-section (2) are different and the same are applicable in different stages.

8. In AIR 1981 Punjab and Haryana 269 Full Bench (Anand Parkash v. Bharat Bhushan Rai and another), the Punjab and Haryana High Court opined that a bare scrutiny of the provisions of Section 35-B would show that the Legislature has made its intention absolutely clear and beyond the pale of any doubt that the provisions are mandatory in nature and any non-compliance with the same would result in penal consequences as envisaged therein. If the Legislature had not intended to make the provisions of the Section mandatory, then it was not at all necessary for the Legislature to have qualified the word "shall" by using words "condition precedent". The said court considered the purpose of imposition of cost and opined that the costs are ordered to be paid to compensate the other party who for no fault of his has to undergo inconvenience and incur expenses. If an adjournment is sought and the same is granted on payment of costs, then on the next date of hearing the party who sought adjournment is bound to pay the costs.

The court is only required to see whether the costs have been paid or not and if a party does not pay the costs, then the only course open to the Court is to disallow the prosecution of the suit or the defence any further. (Emphasis supplied).

9. The Apex Court in (2005) 6 SCC 344 (Salem Advocate Bar Association, T.N. Vs. Union of India) opined that as per Section 35 if an order is passed, requiring the other party to pay costs, the other party shall be required to reimburse the said costs to the other side on the date next following the date of such order, which shall be a condition precedent to the further prosecution of the suit of the defence. Hence, order impugned is passed in accordance with law.

10. The petitioner has not chosen to challenge those orders whereby cost was imposed and, therefore, it is not open to the petitioner to state that the Court below has erred in imposing the cost. So far passing of different order dated 13.10.2014 (Annexure P-6) is concerned, even if such order is passed, that will not make the present order vulnerable. The present order, in the opinion of this Court, is in consonance with the mandate of Section 35-B of CPC.

11. There is no jurisdictional error in the order impugned. The order does not suffer from any manifest procedural impropriety or perversity. The Court below has taken a plausible view. Thus, no case is made out for interference in this petition under Article 227 of the Constitution. (See Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329).

12. Petition is bereft of merits and is accordingly dismissed. No cost.

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