

Ramesh Kumar Jain Vs. Pradeep Kumar Jain and Another

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Court : Madhya Pradesh

Decided On : Mar-24-2014

Judge : Sujoy Paul

Appeal No. : Writ Petition No. 784 of 2013 (I)

Appellant : Ramesh Kumar Jain

Respondent : Pradeep Kumar Jain and Another

Advocate for Def. : Shri. N.K. Gupta

Advocate for Pet/Ap. : Shri. D.D. Bansal

Judgement :

1. The petitioner / defendant No.2 has filed this petition against the order dated 31.10.2012 whereby his application preferred under Order 14 Rule 5 C.P.C. (Annexure P/7) and application under Order 6 Rule 17 C.P.C. (Annexure P/8) were rejected by the Court below.

2. In a suit filed for declaration and permanent injunction the petitioner filed an application under Order 7 Rule 11 C.P.C. This application was rejected by the Court below on 26.04.2012 (Annexure P/3). On 21.07.2011, the petitioner filed his written statement. He raised objections regarding maintainability of suit and non-availability of cause of action. He also raised objection on the ground of limitation. It is further contended that as per Order 2 Rule 2 and as per Section 34 of the

Specific Relief Act, the suit is not maintainable. Written statement is filed as Annexure P/4. The trial Court, thereafter framed seven issues. Feeling dissatisfied and aggrieved by the issues so framed, petitioner preferred an application under Order 14 Rule 5 C.P.C. The trial court by the impugned order dated 31.10.2012 rejected the said application.

3. Shri D.D. Bansal, learned counsel for the petitioner, criticized this order and contended that the trial court has framed the issues only on the basis of pleadings of the plaintiff and has not taken care of the specific objections raised in written statement by the petitioner / defendant No.2. He submits that the Court below has erred in rejecting his applications, aforesaid. Another grievance of the petitioner against the impugned order is that his application Annexure P/8 preferred under Order 6 Rule 17 C.P.C is erroneously rejected. It is contended that by this application, petitioner intended to raise pure legal ground of limitation and therefore, Court below should have allowed this application.

4. Per Contra, Shri N.K. Gupta, learned counsel for the respondent No.1 / plaintiff supported the order passed by the Court below. He submits that there is no legal infirmity nor there exists any procedural impropriety which warrants interference by this Court under Article 227 of the Constitution. Shri N.K. Gupta, learned counsel for the other side submits that application under Order 6 Rule 17 was filed after framing of the issues and therefore, unless due diligence is established by the petitioner, application could not have been allowed. Court below has not committed any error in rejecting the same.

5. No other point is raised by the learned counsel for the parties.

6. I have heard learned counsel for the parties and perused the record.

7. A plain reading of application preferred under Order 14 Rule 5 C.P.C shows that the petitioner has referred relevant paragraphs of his written statement and contended that in view of those pleadings, certain issues are required to be framed. For example, in para 2 and 3 of the said application, the petitioner has raised objection about maintainability of suit in view of Section 34 of Specific Relief Act and on account of limitation. Petitioner has also relied on Section 401 of

Municipal Corporation Act to contend that suit is not maintainable.

8. The Court below in the impugned order opined that the issues so framed are based on rival pleadings of the parties and the issues already framed do not require any amendment or addition. The Court below has framed seven issues. The petitioner by placing specific reliance on averments of written statements stated that certain issues are required to be framed. The Court below has not applied its mind as to whether the said objections needs to be reduced in writing in framing of a relevant issue. In the further opinion of this Court, even if an application preferred by the petitioner under Order 7 Rule 11 C.P.C is rejected earlier, that cannot be a ground for not consider the question of framing issues. It is relevant to remember that while deciding the application under Order 7 Rule 11 C.P.C, only plaint averments are seen and stand taken in the written statement is not looked into. Similarly, defence documents are not required to be looked into for the purpose of deciding Order 7 Rule 11 application. The Court below is required to see the pleadings of the parties and then frame relevant issue/s. The stage of framing issues is a very important stage in a trial. The Court needs to meticulously examine rival pleadings and then frame the issues.

9. In my opinion, the petitioner by his application (Annexure P/7) has raised specific points with regard to framing of new issues. Averments of this application are based on different paragraphs of the written statement. The Court below was required to apply its mind on every paragraph of this application. The Court in a cursory manner opined that issues which are already framed will cover the entire dispute. In my opinion, the Court below has not assigned any justifiable reason for rejecting the application Annexure P/7. There exist no reason in the order as to how objection of petitioner regarding genuineness, correctness and existence of 'Vasiyatnama' can be said to be covered in the issues already framed.

10. Similarly, objections regarding maintainability of suit which goes to the root of the matter (paragraphs 2, 3 and 4 of the application Annexure P/7) are not dealt with nor any reason for the same is assigned. Reasons are heartbeat and soul of conclusion. In absence of reasons, no conclusion can be permitted to stand. The Apex Court in a recent judgment in the case of Kranti Associates Private Limited v.

Masood Ahmed Khan, (2010) 9 SCC 496 has emphasized the need for assigning reasons in judicial, quasi-judicial and administrative proceedings. The relevant portion of the said judgment reads as under :-

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or rubberstamp reasons is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of due process .

11. Accordingly, I am unable to uphold the impugned order to the extent application under Order 14 Rule 5 C.P.C. is rejected.

12. The next question is whether the Court below has properly decided the application Annexure P/8?

13. Admittedly, this application is filed on 27.09.2012 when issues were already framed and matter was fixed for evidence. Thus, trial has already commenced. A proviso to Order 6 Rule 17 was appended in the year 2002, as per this proviso, amendment after commencement of trial can be allowed if the person seeking amendment is able to show his due diligence by assigning reason for belatedly filing the application. Annexure P/8 does not disclose any such reason nor it shows any due diligence. Thus in view of judgment in (Vidyabai and Others Vs. Padmalatha and another) reported in (2009) 2 SCC 409 and in (Abdul Rehman and another Vs. Mohd, Ruldu and others) reported in (2012 AIR SCW 5419, this

amendment is rightly disallowed by the Court below.

14. On the basis of aforesaid analysis, petition deserves to be partly allowed. Accordingly, impugned order whereby application preferred by the petitioner under Order 14 Rule 5 C.P.C. is rejected, is set aside. The impugned order whereby application under Order 6 Rule 17 C.P.C. was rejected, is confirmed. The Court below is directed to rehear the parties on application under Order 14 Rule 5 C.P.C. and pass reasoned order in accordance with law.

15. Petition is partly allowed. No Costs.

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