

Latadevi Vs. Ramnath and ors.

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Court : Mumbai

Decided On : Jan-06-1987

Reported in : AIR1987Bom364; 1987(2)BomCR268; (1987)2BOMLR1302

Judge : M.S. Ratnaparkhi, J.

Acts : [Limitation Act, 1963](#) - Sections 14(1); [Code of Civil Procedure \(CPC\),1908](#)- Order 7, Rule 10, 10A and 10B

Appeal No. : Civil Revn. Appln. No. 1187 of 1987

Appellant : Latadevi

Respondent : Ramnath and ors.

Advocate for Def. : Y.S. Athalye and;A.D. Vyawahare, Advs.

Advocate for Pet/Ap. : S.A. Bobde and;P.C. Marpakwar, Advs.

Judgement :

ORDER

1. The petitioner who was the defendant before the Civil Judge Junior Division, Nagpur, in Regular Civil Suit NO. 594 of 1984 is challenging the order passed by that Court on 19-10-1985 holding that the plaintiff was diligently prosecuting his remedy before the Small Cause suit from 12-9-1979 and returning the plaint for presentation to the proper court on 18-4-1984.

2. The following facts will be necessary for appreciating the real controversy. Small Cause Suit No. 1219/79 was instituted by the plaintiff/respondent No.1. on 10-7-1979 for eviction, mesne profits, notice charges etc. etc. The suit proceeded before the Small Causes Court. A defence was raised that the Small Causes Court has no jurisdiction. This point was decided on merits by the Small Causes Court at Nagpur on 17-7-1983. It was held that the Small Causes Court had jurisdiction to entertain and decide the suit. This order came to be challenged before the High Court in revision. The High Court decided this revision some time on 6-2-1984 holding that the Small Causes Court had no jurisdiction to entertain and decide that suit. Thereafter, when the Small Causes Court received the writ from this Court, it passed an order on 12-3-1984 directing the plaintiff and the defendant to appear before the Court of Civil Judge, Senior Division, Nagpur on 16-4-1984. The endorsement on the plaint shows that the plaint was actually returned to the plaintiff on 18-4-1984 and it is an admitted position that on the very day the plaint was filed before the Civil Judge, Senior Division, Nagpur. These facts are uncontroverted.

3. As the High Court held that the Small Causes Court had no jurisdiction to entertain the suit, the suit came to be presented before the Civil Judge, Senior Division, Nagpur and that too on 18-4-1984. Obviously the question of interpretation and applicability of S. 14 of the Limitation Act came. It was strenuously urged on behalf of the present petitioner that S. 14 of the Limitation Act enables the Court to exclude the time from commencement of the proceedings till the termination of the proceedings, it was urged that in any case the proceedings terminated in view of the order passed by the High Court on 6-2-1984 holding that the Small Causes Court had no jurisdiction. It was, therefore, urged that though the time commenced running from the institution of this suit till 6-2-1984 till the decision of the High Court could be legitimately excluded under S. 14(1), the plaintiff was not entitled as of right to the exclusion of the period commencing thereafter till the expiry of 18-4-1984. Another point which was urged before me was that, it was necessary for the plaintiff to explain to the satisfaction of the Court the action taken by him during the intervening period as that would be relevant for determining whether the plaintiff acted diligently or not. It was the contention of Mr. Bobde that the plaintiff has nowhere shown either in the

affidavit or otherwise that he had been prosecuting his remedies diligently before the wrong Court. This point will have to be examined in details.

4. It is an undisputed position that on 6-2-1984, the High Court found that the Court of Small Causes had no jurisdiction to entertain the suit. It is also interesting to note at this stage that the point regarding jurisdiction was raised before the Court of Small Causes and that the Court held that it had jurisdiction to entertain the suit. It is this Court which came to the conclusion that the Small Causes Court had no jurisdiction to decide this point. When the Revision before this Court was pending, the suit was actually stayed in pursuance of the order passed by this Court and it appears from record that the stay order was to continue till 31-3-1984. It has been the contention of the plaintiff that after the High Court allowed the revision petition, he went to the trial Court and he was told that the writ from the High Court has not been received. Anyhow we have on record an application filed by the present petitioner which gives a chronology of events. The plaintiff did file an application before this Court on 9-6-1986 contending therein that both the parties were directed by the High Court to appear before the Court of Small Causes on 20-8-1984. However, they were told that the writ from the High Court had not been received so far and the suit continued to be stayed till 31-3-1984. The petitioner then contends that on 27-2-1984, he filed an application before the Court stating that the revision which was responsible for the stay of the suit had already been disposed of by the High Court. He requested the court to take up the matter on the decision of the High Court. According to him, it is only on 13-3-1984 that the judge of the Court of Small Causes at Nagpur took up the matter on Board. These facts have been much controverted:

5. What happened on and after 12-3-1984 is evident from the record. On 12-3-1984, the judge of the Court of Small Causes passed the following order.

'The plaintiff by Shri Athale, Advocate read application Exh. 30, Perused the High Court Writ Exh. 27 and the judgement of High Court Exh. 28 as per the order and direction of the High Court, the plaint shall and is hereby returned to the plaintiff for production to the proper Court. The parties are directed to appear before the Civil Judge, Senior Dn. Nagpur on 16-4-1984 without fail positively. Proceeding is

closed.:'

This order no doubt mentions that the plaint shall and is hereby returned to the plaintiff for production to the proper court. However, we find another endorsement made by the same Judge on the plaint on 18-4-1984 which reads as follows::

'In view of the order dated 12-3-1984 the plaint Exh. 1, list of documents Exh. 4 with two documents Exh. 2 Vakalatnama Exh. 3 are returned to the plaintiff for production to proper court.'

It is thus evident that thought is was observed by the Judge on 12-3-1984 that the plaint shall and is hereby returned to the plaintiff for production to the proper court, factual position remained that till 18-4-1984, the plaint was with the Small Causes Court itself.

6. Mr. Bobde, the learned advocate for the petitioner strenuously urged before me that it was incumbent on the part of the pursuance of the orders passed by the High Court in Civil Revision, he took all these steps, diligently, which were necessary in furtherance of taking back the plaint from the Small Causes Court and presenting it before the Court of Civil Judge. Senior Division, Nagpur. What he urged before us was that there is nothing on record, not even an averment in the affidavit that any such been placed on Note No. 51 reported in Mooljee Sika & Co. v. Union of India 1971 Mh LJ 51 where it was observed that the party plaintiff cannot allow the plaint which has been ordered to be returned for presentation to proper Court to remain in Court without taking any steps to take it back and yet claim the benefit on S. 14(1), Limitation Act. Burden is always on the plaintiff to show that during the period between the order of returning the plaint and the actual return of the plaint he was diligent and that he took some steps to obtain back the plaint which was ordered to be returned and the delay was because of causes beyond his control. The Court further observed;

'It may be that for purposes of completing the records of the Court, it may not be possible to return the plaint immediately. But that is not to say that the pla

tiff can allow the plaintiff to lie in the Court for an indefinite length of time. That will amount to allowing plaintiff to take advantages of his own laches and unless, therefore, it is shown that the plaintiff has made any efforts to get back the plant and that he was prevented from getting it back for reasons beyond his control, it acting with due diligence and that he was prosecuting with due diligence.'

7. These observations came to be made when an unduly long period of 8 months and 15 days lapsed in between the order directing the return of the plant to the proper Court and actual filing of that plant before the proper Court.

8. The above observations no doubt refer to some acts on the part of the plaintiff to show that he has been diligent all through; We have to consider equally the set of circumstances that have crept in the present case. What happened in the present case is quite clear. The High Court decided on 6-2-1984 that Small Causes Court had no jurisdiction. Till 20-2-1984, the plaintiff did apply before the Court for taking the case on Board and passing appropriate orders. Appropriate order did necessarily mean the orders contemplated under R. 10(2) of the code of Civil Procedure. It is interesting to note at this stage that when this Revision was decided, the Code of Civil Procedure as amended was incorporated. Rule 10A was incorporated.

9. It is interesting to note at this stage that when this court made observation in Note No. 55, this amendment was not on the statute Book, though the provisions of sub-rule (2) of Rule 10 of O.7 were very much there. That provision contained in R. 10B however, specify a detailed procedure and that too of a mandatory nature. It is obvious that this court was not required to consider this amendment as it was not in the statute book then.

10. We have now to consider the whole question on the background of the order actually passed. The mandatory procedures that were to be complied with by the court and then examine the consequences of these difference actions. As already pointed out, on 12-3-84 the Judge of the Small Cause court took up the case on Board and declared his intention of returning the plant for procedure before the proper court. At the same time he directed both the parties to appear before the civil judge senior division, nagpur, on 16-4-1984 Obviously, the parties were not

expected to go before the civil judge senior causal visityors. There was a purpose for this direction and the purpose was that this plaint which was to be returned by the court of Small Causes was to be handed over to the plaintiff and the plaintiff was to produce or present this plaint before the civil judge, Senior Division Nagpur. It was the only purpose of this direction. For complying with this direction, what was necessary for the court was to keep all the endorsement ready by 16-4-1984 so that the plaint could, without any difficulty, be handed over to the party or to his counsel for further presentatition to the proper court. Mr. Bobde urged before me that there is nothing on record to show that the parties did attend the court either of the

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