

Smt. Sharda Devi Vs. Smt. Chamela Devi

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Court : Allahabad

Decided On : Oct-06-1999

Reported in : I(2000)ACC596; 2000(1)AWC147

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 13

Appeal No. : Civil Revision No. 129 of 1999

Appellant : Smt. Sharda Devi

Respondent : Smt. Chamela Devi

Advocate for Pet/Ap. : Devendra Dahma, Adv.

Judgement :

D. K. Seth, J.

1. The order dated 4th September, 1999 passed in Misc.Case No. 19 of 1995 arising out of Motor Accident Claims Petition No. 34 of 1992 has since been challenged. By the said order an application filed by the defendant-petitioner for recalling the ex parte decree dated 27th April. 1994 passed in M.A.C.P. No. 34 of 1992 has since been allowed on condition that the defendant-petitioner shall deposit a sum of Rs. 50,000 in the learned trial court within one month and shall furnish security for the balance within the same period.

2. Mr. Devendra Dahma, learned counsel for the revisionist contends that though the Court has discretion to direct deposit of the decretal amount in an appropriate case but the Court is bound to exercise jurisdiction Judicially and give reasons to support such exercise of discretion. He relied on the decision in the case of Valluru Kasturi Bai and another v. Pamulapati Varalakshmi, AIR 1983 NOC 176 (AP) and Raj Kumar Soni v. Mohan Meakin Breweries Ltd.. AIR 1979AR370.

3. I have heard Mr. Devendra Dahma, learned counsel for the revisionist at length.

4. In the impugned order, it appears that reason has not been given supporting the direction for deposit of the sum of Rs. 50,000 and furnishing of security for the rest. But the order proceeds that in the interest of Justice, both the parties should be heard and, therefore, such application was being considered on account of depositing a sum of Rs. 50,000 and the security for the balance. But such order was passed on the basis of finding that from the record it appears that notices were sent by registered post which was refused by the defendant. Unserved envelope and notices were available on record as paper No. Ka 38Ga. In such circumstances, it appears that service could have been accepted by the Court as valid service. But the Court did not enter into those questions. On the other hand, it had passed the order of restoration which itself explains the reasons for direction to deposit cash security as well as furnishing of other securities. That apart, it appears that claim was lodged in 1992 and the decree was passed in 1994 whereas the restoration application was filed in 1995. In the meantime, we are in 1999 which is a sufficient delay during which the claimant had been put to suffer and the case would remain pending for more longer time. In order to show bona fide on the part of the defendant, she may be required to deposit such amount. The discretion that has been exercised appears to be Justified in the facts and circumstances of the case.

In case it can be inferred from the order while read in its totality, then absence of specific reason would not be fatal. Though however, reason may be given but still then it can be Inferred from the context in which the order is passed having regard to the facts and circumstances of the case. It is not open to the Court to interfere with such order. In every case where reason is not apparent on the face of the

record, the Court is empowered to infer reasons from the facts and circumstances of the case itself as well as in the order itself.

In the present case, it appears that there were Justifiable reasons for directing deposit of such amount of security. Therefore, without differing with the observations made in the decision in the case of Valluru Kasturi Bai, (supra), I am not inclined to accept the contention of Mr. Devendra Dahma. So far as the case of Raj Kumar Soni, (supra) is concerned, the said decision does not prescribe that reason is to be given. On the other hand, it prescribes that such discretion is to be exercised bearing in mind the judicial pronouncements laying down the guidelines for the sake of uniformity in the administration of justice. Though however, in the said case, it was held that there was no clear finding that the defendant was adopting dilatory tactics. There was also finding that the Court had some doubt in that matter and there was no positive finding for imposing such terms as was done in the said case. Therefore, the facts and circumstances as elaborated therein, it was found that the condition was onerous. In the present case though there was no finding that the defendant had been adopting a dilatory tactics but the fact remains that the order was set aside without entering into those question only in the interest of Justice for having given certain benefits to the defendant, though on the face of the record, it appears that there were materials to render a finding against the defendant in the said matter. When the Court does not enter into the said matter and give certain benefits to the defendant, it is always open to it to impose conditions particularly in order to ascertain bona fide on the part of the party. Thus in such circumstances the condition cannot be said to be onerous.

5. In such circumstances, in view of the distinguishing feature appearing in the present case, I am unable to persuade myself to agree with the contention of Mr. Devendra Dahma. I am, therefore, not inclined to interfere with the said order. However, in the meantime, sufficient time has lapsed. Therefore, the order requires a little modification as hereafter. The time for depositing a sum of Rs. 50,000 in the trial court is hereby extended by three months from this date. The furnishing of security, which may be other than cash or bank guarantee to the satisfaction of the learned trial court, be furnished within the same period. The claimant shall be at liberty to withdraw the said amount upon furnishing security to

the satisfaction of the learned trial court.

6. As soon the sum of Rs. 50,000 is deposited, the case should be treated to have restored in its original file and number. The claim petition should be disposed of within a period of one year from the date after 15th January, 2000. In default, this order as well as the order dated 4th September, 1999, impugned in this petition shall stand recalled. The impugned order stands modified to the above extent.

7. With these observations this revision is disposed of. However, there will be no order as to costs.

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