

Union of India and Another Vs. Super Gold Industries (India) Ltd.

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SooperKanoon Citation : sooperkanoon.com/463108

Court : Allahabad

Decided On : Feb-03-2000

Reported in : 2000(1)AWC835

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order XXVII, Rule 5B - Order 276, Rule 5B

Appeal No. : Second Appeal No. 1712 of 1999

Appellant : Union of India and Another

Respondent : Super Gold Industries (India) Ltd.

Advocate for Def. : Pankaj Mittal, Adv.

Advocate for Pet/Ap. : S.N. Srivastava and ;Subodh Kumar, Advs.

Judgement :

D.K. Seth, J.

1. The only point that has been urged by the learned counsel for the appellant that the learned trial court did not discharge its obligation as provided under Rule 5B of Order XXVII of the Code in endeavouring to arrive at a settlement.

2. Mr. Pankaj Mittal. learned counsel for the opposite parties on the other hand contended that there was no attempt on the part of the appellant to arrive at a settlement and they had never applied for settlement before trial court, therefore, this question cannot be raised, adopting a ground, for admission of the Second Appeal for the first time.

3. I have heard learned counsel for the parties.

4. Rule 5B was inserted in Order XXVII by 1976, Amendment of the Code. The object for which this rule was inserted is that in suits to which Government is a party, and the Government, now under the Constitution undertaking economic activities in a vast and widening public sector, is being Involved Increasingly in disputes with private Individuals, if such positive efforts of settlement are made at early stage of litigation, reasonable adjustments would be feasible in many cases and the State as well as the citizens involved in the disputes will be saved from avoidable wastage of time and money. State is not an ordinary party trying to win a case against one of its citizens by any means. It is not supposed to resort to technical objections to avoid just liability or secure unfair advantage. As a virtuous litigant. It is supposed to meet honest claims regardless of motivations that inspires a private litigating individual to contest.

5. The Legislature had intended to short-cut the process enabling the Government to avoid unnecessary wastage of time, money and energy. It is a duty cast upon the Court. The Court has to take interest in settlement of such disputes where the Government is party. It is also open to either of the parties to apply before the Court for such settlement without prejudice to its rights and contentions.

6. But however the intention of the Legislature, as apparent, does not seem to make it mandatory. It is directory in nature. Omission to resort to this provision would never make the decree infirm or defective. It will not give rise to right to appeal, if it is not resorted to, particularly by the Government when it Itself had never asked for the same and had contested the suit althrough.

7. It may be resorted to normally at the first instance. If the parties agree, It may be resorted to at any stage. But the application of this Rule is possible only when

either of the parties are agreeable. However, it would be desirable, that the Court should fix a date for orders under Rule 5B of Order XXVII before it proceeds to settle the issue or hear the matter, as the case may be.

8. It can also be resorted to by the appeal Court and even in Second Appeal in order to further the same object, provided the parties may agree. In case one of the party disagrees and expresses its serious objection, then the Court is powerless. Court cannot force upon a settlement. Thus omission cannot be held to be fatal.

9. Since Mr. Subodh Kumar had insisted that Rule 5B of Order XXVII ought to have been resorted to, after hearing him for the appellant and the Pankaj Mittal for the respondent the same is being resorted to here in the second appeal, to which they have no objection.

10. Mr. Subodh Kumar learned counsel for the appellant contended that the entire decretal amount has since been deposited in the learned Executing Court. If it is so, in that event, it will be open to the respondents to withdraw a sum of Rs. 96,000 and the amount so incurred by the plaintiff equivalent to the stamp paid by them in the learned trial court. If the amount as Indicated above is withdrawn by the plaintiff-respondents. In that event, the matter should be deemed to have been settled in terms of Rule 5B of Order XXVII. The balance amount that has since been deposited may be refunded to the appellant-defendant by the learned executing Court. In case the amount is not deposited. In that event, the appellant shall deposit the said amount of Rs. 96,000 and the amount of court fee paid by the plaintiff in the learned trial court within two months from today. In default, this order shall stand recalled and the appeal shall stand dismissed and the plaintiff-respondent shall be entitled to proceed with the execution of the decree. If the amount is so withdrawn on being deposited, in that event, the decree shall stand modified to the extent as incorporated in this order.

11. This appeal is disposed as above.

12. However, there will be no order as to cost.

