

Santosh Kumar Singh Vs. Union of India (Uoi) and anr.

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Court : Allahabad

Decided On : Sep-17-2004

Reported in : 2005(1)AWC174; [2005(107)FLR282]

Judge : V.M. Sahai and ;Poonam Srivastava, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rules 1, 5 and 10

Appeal No. : First Appeal No. 412 of 2000

Appellant : Santosh Kumar Singh

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : K.K. Parekh and ;K.C. Sinha, Advs.

Advocate for Pet/Ap. : R.N. Singh, ;Kishan Srivastava and ;V.K. Chandel, Advs.

Disposition : Appeal dismissed

Judgement :

Poonam Srivastava, J.

1. This is a first appeal arising out of the judgment and decree dated 1.5.2004 passed by Additional Civil Judge (Senior Division), Varanasi in Original Suit No. 85 of 1998. The suit was dismissed with cost ex parte. The suit was filed for a mandatory injunction against the defendants, Union of India as defendant No. 1

and State of U.P. defendant No. 2. The defendant No. 1 was arrayed as a party through Chief Secretary, Government of India, New Delhi and defendant No. 2 through Chief Secretary, Government of U.P. Secretariat, Lucknow. Before institution of the suit, notice under Section 80, C.P.C. was given by registered post on 5.11.1997, which was served on the defendant No. 1 on 11.11.1997. The defendants did not respond to the said notice and after lapse of two months, the suit was filed in Varanasi court. The Court issued summons by registered post to the defendants but none of them appeared in Court despite sufficient service, as a consequence service to defendant No. 1 was deemed to be sufficient under Order V, Rule 15 and Rule 19A, C.P.C. on 1.12.1999. An order was passed by the Civil Judge to proceed ex parte.

2. The fact set out in the plaint is that the plaintiff is a practising advocate in Varanasi civil court. His enrolment No. is 1382/75 and he was enrolled in the U.P. Bar Council on 28.7.1975. The plaintiff belongs to a family of advocates and he had a very good practice. The plaintiff claimed that his right of privacy has been infringed by certain officers belonging to the cadre of Indian Administrative Service and Indian Police Service. The plaintiff was duped and as a result of conspiracy against him, some scientific instrument has been implanted in his body which has resulted in failure to earn his livelihood and he is at the verge of starvation. The officers of I.A.S. and I.P.S. have all along administered poisonous substance in his food and tea. which has resulted in impairment of his mental and physical faculty. Since the year 1971 the defendants have got the scientific instrument implanted in his testicles, which has resulted adversely and the plaintiff is not in control of his various organs of his body. His urinary system and his sexual desires and activities are in complete control of the defendants. This scientific instrument was implanted in Sir Sunder Lal Hospital B.H.U. Varanasi in the year 1971. Once again the defendants managed to inject foreign substance in his spinal cord at Police Headquarters, Allahabad. On 18.11.1982 certain other liquid substances were administered in his spinal cord in Sri Shiv Prasad Gupta Hospital, Varanasi. It is further stated in the plaint that the scientific instruments implanted and foreign substance injected in his body has caused him mental and physical pain and agony. He is unable to sleep at night as he is terrorized on account of horrifying dreams which comes to him on account of the instruments and different serums

injected in his body. The defendants are in complete control of his body, thoughts, sleep and other activities. It is further stated that on account of this reason, he is not able to control his body. The plaintiff is not able to live in the civilized society and he is compelled to return amongst the criminal. The defendants are in absolute control of physical and mental faculties of the plaintiff. It is further stated in paragraph 13 of the plaint that yet another instrument was implanted in the spinal cord of the plaintiff on 11.2.1986 forcefully, which has reduced him to such a disbalanced state that he is no more a normal human being and the plaintiff was completely in the hands of the defendants. The plaintiff has alleged in paragraph 15 of the plaint that he had a very good practice in the District Court, Varanasi and he was offered judgeship of the High Court but he had refused it for a number of personal reasons. Whenever plaintiff tried to get himself medically examined, the defendants did not permit the hospital authority to issue the medical certificate as they would read the thoughts of the plaintiff in advance by the help of the instruments implanted in his body and prohibited the hospital authorities to medically examine him. The plaintiff moved an application on 15.6.1996 through the District Magistrate, Varanasi but he did not receive any response till the filing of the suit. The medical expenses for removal of the scientific instruments and foreign substance from his body will cost him one hundred million rupees and this medical assistance is only in the big cities of the country where doctors having advance knowledge in medicine and surgery are available. It is the case of violation of human rights defined under Section 2(d) of the Protection of Human Right, 1993 and also violation of provisions of the International Covenant on Civil and Political Rights, 1966. The suit was valued at hundred million rupees but as the relief claimed was mandatory injunction and the maximum court fee Rs. 500/- was paid.

3. The suit was presented on 23.8.1998 and according to the plaint the cause of action arose for the first time in the year 1971 then 1978 thereafter 18.11.1982, 11.2.1986 and in the year 1995 when the defendants were asked to remove the instrument and thereafter on each and every day till the filing of the suit. No written statement was filed in response to the summons issued to the defendants. In support of the plaint case only evidence adduced by the plaintiff is an affidavit, certificate of enrolment and also copies of the several decisions along with affidavit

such as Civil Procedure Code pages 1042-1025, Law of Tort 451-452 and 473 and 475, AIR 1992 All 1105, Law of Tort, AIR 1922 SC 526, : AIR1941 Cal207 , : AIR1969 Pat194 , AIR 1924 Lah 713 at 716, : [1974]3SCR882 , : [1965]1SCR542 , AIR 1989 SC 1718, AIR (34) 1947 Nag 224. The court below considered all the documents and written argument submitted on behalf of the plaintiff and dismissed . the suit on the ground that no documentary evidence was brought on record except an affidavit has been filed in support of the assertion of the plaint. No specific name of either any officer or doctor has been given out in the plaint. Besides, there is no name of the scientific instrument or the substance implanted in his body. He has also not disclosed the name of the girl with whom he wanted to marry and was prevented by the defendants and also the names of the alleged characterless woman with whom he was compelled to have sexual relation at the behest of the defendants. The court below had concluded that the rulings relied upon by the plaintiff did not help him and entire allegations of the plaint are without any basis, the suit was dismissed with cost.

4. The first appeal against the judgment of the court below was presented before the Registrar on 18.5.2000 and it came up before a Division Bench of this Court on 4.7.2000 for admission. The case was adjourned on the request of the counsel for the appellant and on 12.7.2000, the Division Bench directed the counsel for the appellant to file certified copies of the plaint and order of the trial court however, the appeal was admitted on 31.1.2001. The report of the office dated 25.1.2002 shows that the notices fixing 30.3.2001 were returned after service to the defendant-respondents. In pursuance to the service of notice, the defendants-respondents have not put in appearance before this Court also. On 12.2.2004 a Division Bench of this Court directed the appeal to come up for hearing. Despite the name of the counsel for the Union of India shown in the cause list, no one has appeared in the Court and the case has been taken in the revised list. Sri Ram Niwas Singh, learned counsel for the appellant advanced his argument and repeated the allegations of the plaint and cited certain decisions of the Apex Court.

5. We have heard Sri Ram Niwas Singh, learned counsel for the appellant at length and gone through the plaint and affidavit filed in support of the plaintiffs case. The affidavit is repetition of the plaint itself. However, it has been argued on

behalf of the plaintiff-appellant that he is a citizen of India and the Constitution of India guarantees him right of privacy and the defendants are guilty of committing 'trespass to person'. They are further guilty of using coercive force through the scientific instrument and thereby without consent of the plaintiff bodily injuries were caused to him. He is under constant surveillance and is a victim of cruelty, inhuman, criminal assault and food poisoning. It has also been submitted that the facts pleaded in the plaint have not been controverted by filing a written statement and is therefore impliedly admitted by the defendants under Order VIII, Rule 5, C.P.C. The continuing trespass on the body of the plaintiff has resulted in a nuisance and illegal distress to the plaintiff. The plaintiff has been deprived of his only source of livelihood on account of devices implanted in his body by the defendants which has irreparably damaged the plaintiffs reputation and has caused heavy loss to him. The Court is bound to grant relief of permanent injunction on account of unrebutted case of the plaintiff set out in the plaint and the defendants are liable to be directed to remove the scientific instrument and substance implanted in the spinal cord, testicles, bones cartilages and muscles and other parts of the body of the plaintiff at the instance of the defendants. Reliance has been placed on a Supreme Court decision in the case of Balraj Taneja and Anr. v. Sunil Madan and Anr : AIR 1999 SC3381 . The submission is that since the defendants-respondents have not filed any written statement then on the basis of the decision of Apex Court the case of the plaint should be accepted to be admitted by the defendants and the suit was liable to be decreed with cost.

6. We have gone through the decision of the Apex Court and are of the view that it does not help the plaintiff-appellant. In a case where the case is not rebutted by filing written statement and suit proceeds ex parte. the Court is not bound to decree the suit treating it to be an admission. In a case where the suit proceeds in absence of the defendants it would not be safe for the Court to pass the judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. The Supreme Court has ruled that in a case, specially where a written statement has not been filed by the defendants, the Court should be a little cautious in proceedings under Order VIII, Rule 10, C.P.C. Before passing the judgment against the defendants it is necessary to see that even if the facts set

out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove the facts mentioned in the plaint. In the instant case, the plaintiff has not been able to specify the name of the officers who were instrumental in getting the scientific apparatus or the foreign substance implanted in the body of the plaintiff and the reason or motive to do so. The case of the plaintiff is that beginning from the year 1971 up till 1995, the plaintiff was subjected to inhuman treatment at the hands of the officers belonging to I.A.S. and I.P.S. cadre. Without specifying the names of the officers or the reason for indulging in such an act, the so called allegations of the plaintiff cannot be accepted on its face value only because no written statement has been filed by the defendants. It is the burden of the plaintiff to prove the plaint case with the help of cogent evidence and it is essential that he should first substantiate his case before the defendants are required to counter the case of the plaint. In the present case, the plaintiff has not disclosed the name of the doctor who had implanted the instrument, it is not even detailed as to how he is not able to control his various organs and activities and how he has come to know that the instruments are being controlled by so called officers working for the defendants. What are the symptoms that has led him to believe that he is being controlled by the defendants. The plaintiff has not made any application during the proceedings to get himself medically examined through the Court, the only assertion in the plaint is that he has given an application before the District Magistrate, Varanasi which remains unrespondend till date. The plaintiff has completely failed to prove the case of the plaint and It would not be safe for the Court to grant the relief prayed to the plaintiff only because no written statement has been filed by the defendants. The counsel for the plaintiff-appellant placed reliance on a decision in the case of Balraj Taneja (supra) by the Apex Court whereas on reading of the said decision, it is clear that it does not help the appellant at all, paragraph 29 of the said decision is quoted below:

'As pointed out earlier, the Court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor the Court should proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a written statement has not been filed by the

defendant, the Court should be a little cautious in proceeding under Order VIII, Rule 10, C.P.C. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression 'the Court may, in its discretion, require any such fact to be proved' used in Sub-rule (2) of Rule 5 of Order VIII, or the expression 'may make such order in relation to the suit as it thinks fit' used in Rule 10 of Order VIII.'

7. In the present case, the plaintiff has levelled allegations against certain officers belonging to the cadre of Indian Administrative Service and Indian Police Service without specifying or naming in particular officer, who had indulged in the activities set out in the plaint. The Court could not decree the suit against the Union Government and also State Government without being satisfied about the correctness of the allegations made by the plaintiff. It is not a case where the facts set out in the plaint could be treated to have been admitted by the defendants. We cannot loose sight of the fact that officers belonging to the I.A.S. and I.P.S. cadre are continuously transferred and are on constant move from one place to another, thus in case the submission of the counsel for the appellant that the plaint case should be treated as a 'deemed admission' then it will lead to a position where all the officers within the span of the period beginning from 1971 to 1995 were responsible for the alleged wrong caused to the plaintiff appellant. Thus, it could not be said to be a case where the facts did not require to be proved and it could be accepted only on the basis of a deemed admission. We feel that the trial court could not pass the judgment decreeing the suit without requiring the plaintiff to prove the facts so as to settle the factual controversy. It is only in cases where there are no factual controversy and in absence of a written statement, the Court

had no option but to accept the plaintiffs case as set out in the plaint, the benefit claimed by the plaintiff under Order VIII, Rule 10, C.P.C. could be given to him. In the instant case, the facts of the plaint are itself very vague and on the face of it appears to be based on sheer imagination of the plaintiff, the trial court could not have decreed the suit. We have given careful consideration to the arguments advanced on behalf of the appellant.

8. Order VIII, Rule 5, C.P.C. deals with the topic of specific denial which is as under:

'(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to Sub-rule (1), or under Sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever, a Judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.'

9. The scheme of this rule depends on filing or non-filing of the pleading by the defendants. Sub-rule (1) of Rule 5 provides that any fact stated in the plaint, if not denied specifically or by necessary implication shall be treated to be admitted. Rule further provides that general or an evasive denial will not constitute sufficient denial. The denial must be specific and without any ambiguity. However, the proviso to Sub-rule (1) of Rule 5 leaves the Court that discretion to require any fact

so admitted to be proved otherwise than by such an admission. The proviso to the rule takes care of such facts which may be treated to be 'so admitted' in absence of a written statement to be proved by valid and cogent evidence. In the circumstances, we feel that the allegations of the plaint require the facts to be proved and a lot more is wanting before the suit could be decreed which the plaintiff has miserably failed in the present case. He has only filed an affidavit which is nothing but replica of the plaint. Order VIII, Rule 10, C.P.C. deals with the procedure when a party fails to present a written statement called for by the Court. Order VII, Rule 12, C.P.C. (High Court Amendment Allahabad) provides Order VII shall apply so far as may be to address for service filed under the preceding rule. On a joint reading of Rules 20 and 22 of Order VII, it is clear that an address for service should be given by the plaintiff for effecting service of notice summons or in the event no agent or adult male member of family on whom a copy of service can be served, is present, a copy of service shall be affixed. In this case the defendants have been arrayed as a party through the respective Chief Secretaries of Union of India and State of U.P., whereas the allegations of the plaint are required to be controverted by the officers who had indulged in invading privacy of the plaintiff and other allegations set out in the plaint. Admittedly, no officer has been specified in the plaint. In the circumstances, the address required to be given for effecting service, cannot be said to be sufficient as required by the Code of Civil Procedure. In absence of notice the benefit of Order VIII, Rule 5, C.P.C. was not at all available to the plaintiff. The court below had held the service to be sufficient but we feel that for want of sufficient particulars for effecting service of summons, the case could not have proceeded ex parte. However, the trial court has dismissed the suit on the basis of proviso to Order VIII, Rule 1, C.P.C. and we feel that it does not call for any interference. We do not feel that the plaintiff is entitled for any relief and the judgment of the trial court does not call for any interference. The suit was rightly dismissed with cost. The appeal is therefore, dismissed with cost. We feel that the valuable time of the Court has been taken by the plaintiff-appellant for a case which appears to be sheer imagination but since we feel that he is undergoing some mental stress. We refrain from imposing any special cost.

