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Bir Singh Vs. Bachan Singh

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Court : Punjab and Haryana

Decided On : Aug-18-2004

Reported in : (2005)139PLR616

Judge : Surya Kant, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 114; Oaths Act, 1873 - Sections 8 to 12; Oaths Act, 1969 - Sections 9 to 12; Evidence Act - Sections 20

Appeal No. : Civil Revision No. 1620 of 1986

Appellant : Bir Singh

Respondent : Bachan Singh

Advocate for Def. : Monika Goel, Adv.

Advocate for Pet/Ap. : V.G. Dogra, Adv.

Disposition : Petition dismissed

Judgement :

Surya Kant, J.

1. This Revision has been directed against an order dated February 14, 1986 passed by the Additional Senior Sub Judge, Jagraon dismissing an application under Section 114 of the Code of Civil Procedure whereby review of the

order/judgment dated August 12, 1985 vide which the suit of the Petitioner was dismissed was sought.

2. The Petitioner filed a suit for recovery of Rs. 6,800/- against the Respondent. An ex parte decree was passed in his favour on November 16, 1984. The Respondent, however, appeared before the Civil Court and on his application, the ex parte decree was set aside. The case was contested, issues were framed and the Petitioner/Plaintiff concluded his evidence on July 24, 1985. The case was thereafter listed for evidence of the Respondent/Defendant on August 9, 1985. It appears that on the afore-mentioned date, the Petitioner/Plaintiff volunteered before the Court that in case the Respondent/Defendant swears in Gurdwara Sahib at village Halwara that he never borrowed the amount from the Petitioner/Plaintiff, then his suit may be dismissed as withdrawn. The Respondent/Defendant also volunteered to make a statement ion Gurdwara Sahib that he had not taken the amount from the Petitioner/Plaintiff against the pro note in dispute and that if his oath is proved false, God may throw him in the hell and if he did not take the oath, the suit of the Petitioner/Plaintiff be decreed. It further appears that in view of the statements made by both the parties, Rajender Singh, Reader of the Court was appointed as Local Commissioner to administer the oath to the Respondent/Defendant in Gurdwara Sahib at village Halwara on August 10, 1985. The Respondent/Defendant took the oath in the afore-mentioned Gurdwara stating that he had not taken/the amount in dispute from the Petitioner/Plaintiff nor had he executed the pro note in dispute. Thereafter, the suit was dismissed as withdrawn on August 12, 1985. In the application seeking review of the afore-mentioned order, it was, however, submitted that the oath taken by the Respondent/Defendant did not correspond to the oath which he was bound to take in terms of the statement made in the court. Therefore, the order dated August 12, 1985 dismissing the suit as withdrawn was passed erroneously and was liable to be reviewed/recalled. The Respondent/Defendant appeared and filed written reply with a preliminary objection that the Petitioner/Plaintiff has no locus standi to file the application. In reply on merits, it was averred that, firstly the Petitioner/Plaintiff was asked to take oath in the Gurdwara Sahib but he refused to do so and then offer was made to the Respondent/Defendant who accepted the offer and took the oath in Gurdwara Sahib in the presence of the local commissioner appointed by

the Court as well as other persons. The Respondent/Defendant took the oath and uttered the same words as was administered to him by the local commissioner of the Court and that the suit was dismissed on August 12, 1985 in view of the report of the local commissioner and no objection was raised by the Petitioner/Plaintiff or his counsel at that time.

3. The learned civil Court having found that the documents on record as well as from the pleadings, it was proved that the Respondent/Defendant took oath to the effect that he had not taken any loan from the Petitioner/Plaintiff nor had he executed the pro note in dispute. The learned trial Court, though also-found that the words of the oath which was to be taken by the Respondent/Defendant did not correspond to the words of the statements which he had made in the Court on August 9, 1985, it, however, held that the respondent was not at fault for this discrepancy as he took the oath as was administered to him by the local commissioner and that the Petitioner/Plaintiff or his counsel ought to have raised an objection in the Court on August 12, 1985 before his suit was dismissed as withdrawn. Therefore, there was no substance in the application moved by him which was accordingly dismissed. Aggrieved by the afore-mentioned order the present Revision Petition has been filed.

4. I have heard Shri V.G. Dogra, learned counsel for the Petitioner/Plaintiff and Ms. Monika Goel, learned counsel for the Respondent/Defendant and have perused the pleadings.

5. Shri Dogra has contended that the very approach of the learned Civil Court in deciding the suit on the basis of oath was erroneous in law as after the repeal of the Indian Oath Act, 1873 by the Oaths Act, 1969, the suit could not have been decided in the afore-mentioned manner as Section 8 to 12 of the 1873 Act, which used to authorize the Court to dispose of the Civil suits on the basis of oaths, are no longer in force. He has also placed reliance upon I.L.R. (1979) K.N.T. 20181 to contend that if the suit is not pending on the date when the old Act was repealed, then oath cannot be resorted to for the disposal of the suit. A somewhat similar view has also been taken in I.L.R. (1974) H.P. 6452 and Ananda Chandra Sahu (deceased by LR) and Ors. v. Ananta Khuntia and Ors., A.I.R. 1983 Orissa 250.

He has also placed reliance upon a Division Bench judgment of this Court in the case of Thakur Singh and Ors. v. Inder Singh, (1976)78 P.L.R. 601 to contend that when an oath is not taken strictly in accordance with the undertaking given, the same is not binding.

6. On the other hand, Ms. Monika Goel, learned counsel for the Respondent, has contended that provisions of the Oath Act, 1969 are not attracted to the present case as herein the petitioner himself insisted on the oath to be taken by the Respondent and the same having been taken, it was the Petitioner who got his suit dismissed as withdrawn on August 12, 1985. She has also contended that no such plea in relation to violation of provisions of the Oaths Act, 1969 was taken by the Petitioner in his review application before the lower Court.

7. Coming first to the objection taken by the learned counsel for the Respondent that the plea of non compliance of the provisions of the Oaths Act, 1969 was not taken by the Petitioner in his review application before the lower Court, I am of the view that a plea which is purely based upon provisions of law, without the aid of facts or evidence in support thereof, can be taken even before the revisional Court. The import of the repeal of Indian Oaths Act, 1873 and/or Oaths Act, 1969 having come into force the revisional court could have gone into it even if no such plea was taken before the lower Court.

8. The contention of learned counsel for the petitioner that after the 1873 Act has been repealed by the 1969 Act, the suit could not have been decided on the basis of the oaths taken by the parties, however, has been well answered and explained by a Division Bench of this Court in Thankur Singh's case (supra) wherein it was held that:-

'The whole of the 1873 Act has been repealed by Section 9 of 1969 Act. Whereas provisions corresponding to other Sections of the 1873 Act have been made in the new Act, no provisions have been made therein corresponding to Sections 9 to 12 of the old Act. The only effect of the exclusion of Sections 9 to 12 of the old Act is that if any party to any judicial proceeding offers to be bound by any special oath and the Court thinks it fit to administer such an oath to the other party consenting thereto and such oath is taken by the party, the evidence given on such oath as

against persons who offered to be bound as aforesaid would no more be conclusive proof of the matter stated in such deposition. In the instant case, it is significant to note that no special oath was prescribed. The counsel for the plaintiff in his statement (which has already been quoted above) did not prescribe any special oath or any special form of the oath but merely offered the defendant-appellant to take oath and make statement on the two crucial points in issue in a particular Gurdwara. He was not required to swear by the Gurdwara or by Guru Granth Sahib or in any other special manner. In these circumstances, it appears to us that the compromise arrived at between the counsel for the defendant-appellant would be covered by Section 20 of the Evidence Act and the plaintiff would be bound by the statement made by the defendant on the two crucial issues if the same is found to have been made strictly in accordance with the terms offered by him.'

9. Applying the principles laid down by the Division Bench, as reproduced above, to the facts and circumstances of this case, it has come on the record that the Petitioner himself volunteered for the dismissal of his suit as withdrawn if the Respondent took an oath denying his taking of loan from the Petitioner and/or executing the pro-note in dispute. In my view, there is a marked distinction between deciding a suit on merits by the civil Court itself on the basis of statements made by the parties on oath on one hand, and withdrawal of a suit by the plaintiff on the basis of such statement on oath on the other hand. While in the first case, the statements on oath will merely constitute an 'evidence' for the purpose of adjudication of the suit whereas in the later case, there is no legal necessity or requirement of an evidence on record to permit a plaintiff for the simplicitor withdrawal of his suit. In other words, by permitting a plaintiff to withdraw his suit, the Court does not decide the lis on merits only on the basis of statements on oath by the parties. Since, in the case in hand, the Petitioner agreed to get his suit dismissed as withdrawn on the pre-condition of making a statement by the Respondent on oath in Gurdwara Sahib and the lower Court having permitted the Petitioner to withdraw the same, it does not amount to adjudicating the suit on the basis of the statements on oaths made by the parties as power the provisions contained in Sections 8 to 12 of the repealed Act of 1873.

10. So far as the objection raised by the Petitioner regarding not taking oath by the Respondent in the agreed terms is concerned, in my view, it is too late for him to raise this objection. The respective statements regarding taking oath and/or withdrawal of the suit were made by the parties on August 9, 1985 whereas the suit of the Petitioner was dismissed as withdrawn on August 12, 1985 in his presence as well as of his counsel. The objection that the oath was not taken by the Respondent as per the agreed terms, ought to have been taken by him at that stage only and not after dismissal of his suit as withdrawn. To be fair to Shri Dogra, he has placed reliance upon para 7 of the judgment of the division Bench in Thakur Singh's case (supra). It is true that the Division Bench found infirmity in the manner in which both the parties in that case had agreed to make statements in Gurdwara Sahib, however, on facts the omission was found of material bearing and crucial in order to succeed in the suit in terms of the compromise. In the case in hand, however, it has been found by the learned lower court that the statement made by the Respondent in the Gurdwara Sahib though was in variation and its wordings differed from what was actually agreed upon between the parties but there is absolutely nothing on record to suggest that in his statement on oath in the Gurdwara Sahib, the Respondent did not deny taking of any amount of loan from the petitioner and/or execution of the pro-note in dispute. In my view, it is not the words, rather the substance that matters. It is not the case of the Petitioner himself that the variation in the statement made by the Respondent had such material affect that he could not be taken to have denied either receiving of the loan amount from the Petitioner or execution of the pro-note in dispute. The Petitioner, therefore, cannot take any advantage of the observations made by the Division Bench in Thankur Singh's case (supra).

10. For the reason afore-mentioned, I find no merit in this Revision Petition. It is accordingly dismissed with no order as to costs.

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