

ishwar Dass Vs. Nirmal and ors.

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Court : Delhi

Decided On : Nov-22-1968

Reported in : ILR1969Delhi149

Judge : I.D. Dua, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : Civil Revision Appeal No. 194 of 1968

Appellant : ishwar Dass

Respondent : Nirmal and ors.

Advocate for Pet/Ap. : B.J. Nayar, Adv

Judgement :

Inder Dev Dua, J.

(1) This revision under section 115, Code of Civil Procedure, is directed against the following order of a learned Subordinate Judge 1st Class, Delhi dated 9-1-1968:

'PRESENT counsel for the parties.

Shri B. N. Sharma, Accountant of the Punjab National Bank has appeared. The plaintiff did not bring the money yesterday and he was directed to pay a sum of

Rs. 50.00 as searching fees etc. as claimed by the witnesses. Today the witnesses have been examined and at the close of the evidence of the witness the plaintiff was directed to pay Rs. 50.00 to the witness but he has declined to do so. He states that he has not brought the money today. He is ordered to deposit the same tomorrow positively and failing the same, the suit would stand dismissed. In case the plaintiff deposits the amount of Rs. 50.00 then the case will be taken on 31-1-68 for the statement of the plaintiff and for defense evidence on 24-2-1968.'

(2) The relief claimed is that the impugned order be set aside and the learned Subordinate Judge be directed to 'examine the witnesses summoned, served and ordered to be produced before recording the statement of the petitioner and closing his evidence and also order the refund of Rs. 50.00 deposited by the petitioner as per lower Court's order dated 9-1-1968 under revision.'

On behalf of the respondents, an objection has been raised, which has been described to be a preliminary objection, to the effect that earlier, the petitioner had presented to this Court a revision (C.R. 132 of 1968) which was dismissed in limine by S. K. Kapur, J. on 7-3-1968. In that revision, so argues Shri Nayar, same relief was claimed by the petitioner as he seeks in the present revision. It is argued that on this ground the present revision should be held to be incompetent and be dismissed.

(3) I have referred to the earlier revision (C.R. 132 of 1968) and I find that it was directed against an order of the Court below dated 3-2-1968 dismissing the petitioner's application dated 22-9-67 and 31-1-1968. It is thus obvious that on the basis of this preliminary objection, the present revision cannot be held to be incompetent. Incidentally, in the earlier revision filed by the petitioner in person, S. K. Kapur J. requested Shri Brij Bans Kishore, an Advocate practicing at the bar of this Court, to help the petitioner because the petitioner was considered not to be conversant with the law and was also not in a position to afford a counsel. Shri Brij Bans Kishore took the trouble of going through the relevant record and assisted S. K. Kapur, J. in this matter. However, the revision was held not to be sustainable on the merits and was dismissed on 7-3-1968.

(4) In the present revision also, Andley, J. before whom it was set down for preliminary hearing, sent for the records on 29-3-1968. It was admitted by the learned Judge on 15-4-1968. Then there was some controversy about the service of respondent No. 2 and the stay matter was dismissed in default by the learned Single Judge on 22-5-1968. Its restoration was also denied, no sufficient grounds having been shown for the same. On several dates of hearing, Jagjit Singh, J. dealt with this matter, but for one reason or the other, the revision could not be heard. On 24-10-1968, when the case was placed before me, the petitioner represented that he could not afford to engage a counsel. I thereupon, requested Shri R. L. Tandon, an eminent Advocate of this Court, to help the petitioner, to which he willingly agreed.

(5) Today, Mr. Tandon stated at the bar that according to his advice, the petitioner had reportedly presented another revision petition against the order closing his evidence. However, the petitioner again suggested that he himself would argue the case because the counsel was not prepared to argue the way he was desired by the petitioner. Shri Tandon then withdrew from the case with the Court's permission and, in my opinion, rightly. This Court is thankful to him for having very kindly agreed to assist the petitioner and the Court and for having helped the petitioner with his professional advice at the Court's suggestion. This is in accordance with the high traditions of the legal profession and of the bar of this Court.

(6) After hearing the petitioner at length, I do not find anything so infirm with the impugned order as would justify interference on revision. I am informed by the respondent and I have checked it up from the record that the petitioner has since actually appeared as a witness and his evidence has been recorded in English as was requested by him. If he feels aggrieved by a final decree to be made in his suit by the Court, he can take the matter on appeal and seek redress of his grievance in accordance with law even against the interlocutory order which is the subject-matter of the present revision. Section 105, Civil P.C., provides for such relief. There is no jurisdictional error, nor is there any material illegality or irregularity in the exercise of the lower Court's jurisdiction in making the impugned order. In other words, neither defect of jurisdiction nor error of procedure resulting

in failure of justice has been made out. Errors, whether of facts or of law, are not meant to be corrected by this Court on revision as such a course is manifestly beyond this Court's power. This revision is thus dismissed.

(7) The proceedings have been pending since a long time and the attention of the Court below is drawn to the desirability of expeditious disposal of the case. There is one other aspect to which I would like to draw the attention of the Court below and that is the propriety of properly maintaining the records of cases. The sheets on which the statement of the petitioner has been recorded by the Court below seem to be torn at more places than one and it is not easy to read the entire statement without strain. This betrays lack of proper care and attention on the part of the staff of the Court below. Torn pages of the record containing statements of witnesses defeat the cause of justice. It has to be remembered that one of the essentials of a good judicial record is that it can be read without difficulty by those who have to read it. It is the responsibility of the Presiding Officer of the Court to see that the record is properly maintained and can be properly read in full whenever necessary. The Courts are expected to be supplied with the paper of the requisite quality.

(8) The petitioner will pay the cost of the respondent. Parties are directed to appear in the Court below on 30-11-1968 which date, I am informed, is already fixed in the suit