

Sada Ram Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jan-29-1973

Reported in : AIR1974Delhi35; 1973RLR295

Judge : V.S. Deshpande, J.

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

Appeal No. : Civil Revision Appeal No. 454 of 1972

Appellant : Sada Ram

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : K.R. Mehrotra,; Keshav Dayal and; Ram Pal, Advs

Judgement :

V.S. Deshpande, J.

(1) Inherent powers u/s 151 are similar to an order as court thinks fit u/0.7 R 10, Civil Procedure Code .

(2) Plaintiff filed a suit against the D.D.A. on 17.5.71 for injunction against demolition of his shops. Defendant appeared on 3.6.71 and did not file written statement and did not do so for several hearings and ultimately Court refused further opportunity on 13.1.72 and fixed case for plaintiff's evidence for 29.1.72.

Some witnesses were examined on that day and case was adjourned for rest of witnesses to 3 3.72. On this day, defendant applied for permission to file written statement pleading that office file had been misplaced and that caused the delay. Defendant was allowed to do so on payment of Rs. 50 as costs. The plaintiff challenged this order by revision U/S 115, Civil Procedure Code High Court examined the scope of S. 115 and dismissed the petition. Para 3 onwards the judgment is :-

(3) The word 'case' does not refer necessarily to the case as a whole but can include even a part of the case. therefore, a decision on a part of the case is also revisable even though it does not dispose of the whole of the case. It is necessary, however, that such a decision must effect the rights and liabilities of the parties. It should not be merely an interlocutory order like the orders of stay, injunction or receiver which are designed to preserve the status quo or to preserve the property pending the litigation or merely a procedural order like the orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of commissions for examination of witnesses, inspection of premises or fixing a date of hearing or granting or refu

(4) In the present case, the impugned order has only allowed the defendant to file a written statement. It does not affect the merits of the case at all. Of course, the plaintiff can claim to be prejudiced thereby because he was hoping to get a decision against the defendant without the defendant being allowed to defend itself. But such prejudice is not the test of an order which can be said to affect the rights and liabilities of the parties. Such rights and liabilities apparently mean the substantive rights and liabilities relating to the merits of the case. In the view, therefore, that the impugned order could not be said to have amounted to 'case decided' within the meaning of section 115 Civil Procedure Code.

(5) As to jurisdiction, it was not contended that the trial Court did not have the jurisdiction to pass the impugned order. It was, however, contended that the trial Court exercised its jurisdiction illegally or with material irregularity in doing so. Learned counsel for the petitioner contended that the order of 13 January, 1972 by which the trial Court decided to proceed against the defendant as defendant was

not defending itself should be taken to have been passed under section 151 Civil Procedure Code. It was an order which was adverse to the defendant. As the defendant did not file any revision against that order, it had become final against the defendant. Such a final order could not be set aside by the Court later in exercise of its inherent powers under section 151 Civil Procedure Code as it purported to do by passing the impugned order. In my view, it is unnecessary to consider whether the order of 13th January, 1972 and impugned order of 14th November 1972 were passed under section 151. They may have been passed under Order VI rule 10 Civil Procedure Code which authorises the court to 'make such order in relation to the suit as it thinks fit' where any party from whom a written statement is so required fails to present the same within the time allowed by the Court. There is no agreement among the Judicial decisions as to whether Order VIII rule 10 applies when the Court requires the written statement to be filed under Order VIII rule 9 only or whether it applies even when the written statement has to be filed by the defendant under Order VIII rule 1 Civil Procedure Code. But we need not enter into this controversy because the words 'make such order in relation to the suit as it thinks fit' used in Order VIII rule 10 C. P. C. give the trial Court a wide discretion in passing such order as it thinks fit as may be suitable in the circumstances of a particular case. It would appear to me, however, that the impugned order as also the order of 13th January 1972 could be passed under Order VI rule 10 C. P. C., because they were passed on the failure of the defendant to file the written statement within the time fixed by the Court. Just as an order passed under Section 151 Civil Procedure Code could be the subject of a revision, similarly the order passed under Order VIII rule 10 Civil Procedure Code could also be the subject of revision. It is immaterial whether and under which of these provisions to the Civil Procedure Code the impugned order was passed in considering its revisability. The conditions to be satisfied by the impugned order under section 151 Civil Procedure Code would be the same in either case. Both under Order VIII rule 10 and section 151 Civil Procedure Code the discretion of the trial Court in passing an appropriate order is very wide. This enhances the difficulty of the plaintiff to show that the trial Court exercised the jurisdiction in passing the order either illegally or with material irregularity.

(6) In *Mohindra Land and Building Corporation Ltd. V. Bhutnath Banarjee*, : [1964]3SCR495, the Supreme Court brought out the distinction between an order which could be attacked for a jurisdictional defect and an order which could not be so attacked. In the trial Court had passed an order contrary to a provision of the Limitation Act, then section 3 of the Limitation Act enjoined the Court to dismiss any suit etc., filed after the period of limitation and, therefore, in passing such an order, the Court would be acting contrary to its jurisdiction. Such an order would, therefore, be liable to be interfered with in revision under section 151 C. P. C. On the other hand, under section 3 of the Limitation Act, the Court had, the discretion to admit an application etc., even after the expiry of the specified period of limitation if it is satisfied that the applicant had sufficient cause for not presenting it within the prescribed time. In that case such an application was allowed by the trial Court. But the decision of the trial Court was reversed by the High Court on the ground that no good cause for delay was shown and that the application had been made after the expiry of the period of limitation prescribed for it. The decision of the High Court was reversed by the Supreme Court with the following observations at page 503 :-

'THE Subordinate Judge had jurisdiction to decide both the questions of fact, viz., whether the appellant had sufficient cause for not making an application for setting aside the abatement of the suit within the period prescribed and therefore had sufficient cause for the Court's exercising its discretion in extending the period of limitation in view of the provisions of section 5 of the Limitation Act and also the fact whether the appellant 'was prevented from sufficient cause from not making an application for the substitution of the legal representatives within the prescribed period of limitation and thus continuing with the suit. The Court had the jurisdiction to decide both the questions of fact and also to proceed with the suit as a result of its decision'.

(7) The present case is even simpler. No period of limitation had been prescribed for the filing of a written statement by the defendant. It could not be said, therefore, that the delay on the part of the defendant in filing the written statement created any right in the plaintiff to object to the late filing of the written statement on the ground of limitation. If the trial Court had the discretion in

allowing the written statement to be filed, though late, then it could not be said that the discretion was exercised illegally or with material irregularity. The rule as to the exercise of such discretion has been laid down -by the Supreme Court in Sangram Singh v. Election Tribunal, Kotah, : [1955]2SCR1 , repeatedly at several places in the following words ;-

'Acode of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further it ends: not a penal enactment for punishment and penalties not a thing designed to trip people up. (Page 8).....Next there must be ever present to the mind the fact that our laws of procedure 'are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that the men should not be precluded from participating in them. (Page 9)... ..But broadly speaking, after all the various factors have been taken into consideration and carefully weighed, the endeavor should be to avoid snap decisions and to afford litigants a real opportunity of fighting out their cases fairly and squarely. Costs will be adequate compensation in many cases and in others the Court .has almost unlimited discretion about the terms it can impose provided always the discretion is judicially exercised and is not arbitrary (Page 16).....The general rule, founded on principles of natural justice, the proceedings in a Court of justice should not be conducted behind the back of a party in the absence of an express provision to that effect is no less compelling, (page 17).....If these considerations are to weigh, then surely the sounder rule is to leave the Court with an unfettered discretion so that it can take every circumstance into consideration and do what seems best suited to meet the ends of justice in the case before it. (page 19).'

(8) The rule is, of course, subject to an exception that if the facts of the case are such that the defendant should be harshly dealt with, the Court may not allow him to file a written statement but allow him to participate in the case only from the stage at which he has appeared and then deliver a judgment which would be most probably against him.

(9) Learned counsel for the petitioner strongly urges that the defendant was negligent in not filing the written statement and unless it showed a good cause for putting the clock back it should not have been given the opportunity of filing the written statement and defending the suit as if it had filed the written statement in time. He seeks support from the analogy of Order IX rule 7 Civil Procedure Code under which the Court is empowered to allow the defendant to defend himself if the defendant appears and assigns good cause for his previous non-appearance. The permission to defend would then have the effect as if the defendant appeared on the date he was required to do so. The clock is allowed to be put back. [The Court then held that defendant be allowed to defend himself subject, to payment of adjournment costs to the plaintiff.

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