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Court : Rajasthan

Decided On : Aug-08-1986

Reported in : AIR1987Raj19; 1986(2)WLN298

Judge : N.M. Kasliwal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 141 - Order 8, Rule 9 - Order 39, Rules 1 and 2

Appeal No. : Civil Revn. Petn. Nos. 231 and 308 of 1986

Appellant : Shakoor and Etc.

Respondent : Jaipur Development Authority, Jaipur and Etc.

Advocate for Def. : K.K. Sharma and; R.S. Mehta, Adv.

Advocate for Pet/Ap. : R.C. Kesliwal and; P.K. Sharma, Adv.

Disposition : Petitions allowed

Judgement :

ORDER

N.M. Kasliwal, J.

1. In both the above civil revisions identical questions of law arise as such they are disposed of by one single order.

2. In both the cases the plaintiffs filed a suit for permanent injunction and along with the suit filed an application for temporary injunction under Order 39, Rule 1 and 2, C.P.C. The defendants filed a reply to the application for temporary injunction and thereafter the plaintiff filed a rejoinder under Order 8, Rule 9 read with Section 141, C.P.C. The learned trial Court held that Order 8, Rule 9 can apply where suit is filed and after filing the written statement the plaintiff wants to file subsequent pleadings. It was further held by the trial Court that the provisions of Order 8, Rule 9 did not apply in respect of an application filed for temporary injunction. It was also observed by the trial Court that the provisions of Section 141, C.P.C. read with Order 8, Rule 9 C.P.C. also did not permit the plaintiff to file a rejoinder in case of an application for temporary injunction filed under Order 39, Rule 1 and 2 C.P.C.

3. Aggrieved against the order of the trial Court, these revisions have been filed by the plaintiffs.

4. It was contended by learned counsel for the plaintiffs that under the provisions of Section 141, C.P.C. the procedure provided in the Code of Civil Procedure in regard to the suit has to be followed as far as it can be made applicable in all proceedings in any Court of Civil jurisdiction. It is submitted that the proceedings under Order 39, Rule 1 and 2 being miscellaneous proceedings, the procedure provided in the C.P.C. in regard to suits should be followed to miscellaneous proceedings. It is further argued that in a suit for permanent injunction the scope of the suit as well as the application for temporary injunction remains almost identical. The Court is entitled to consider the pleadings contained in the plaint for deciding the questions of prima facie case, balance of convenience and irreparable loss for disposing of the application for temporary injunction. That being so, if the plaintiff can file subsequent pleadings under Order 8, Rule 9 in respect of the main suit, there can be no valid reason to disallow the plaintiff to file a rejoinder to the reply filed by the defendant of the application for temporary injunction. It is further argued that any order passed in miscellaneous proceedings of temporary injunction some times decides the very suit for permanent injunction and as such if any new plea or facts are introduced by the defendant in reply to the application for temporary injunction, it becomes very necessary for the plaintiff to

clarify and explain the same by way of rejoinder. Thus in order to do real justice between the parties and to find out the truth it is necessary to permit the plaintiff to explain the new pleas taken by the defendant in the reply.

5. On the other hand learned counsel for the defendants submitted that the provisions of Section 141 can only apply in case of original proceedings. It is submitted that proceeding for temporary injunction are not original proceedings and as such no rejoinder can be permitted in such proceedings. It is further argued that in the explanation to Section 141 only proceedings under Order IX have been included and this shows the intention of the legislature not to include any proceedings other than those contained in Order IX.

6. In order to appreciate the arguments advanced in the case by learned counsel for both the parties and to decide the legal controversy raised in these cases, it would be necessary to reproduce Section 141 and Order 8, Rule 9, C.P.C. Section 141 : --

Miscellaneous proceedings:-- The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction.

Explanation : -- In this section, the expression 'proceedings' includes proceedings under Order IX but does not include any proceeding under Article 226 of the Constitution.

Order 8, Rule 9:-

Subsequent pleadings:-- No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off (or counter claim) shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

7. Order 8, Rule 9 permits the subsequent pleadings by the leave of the Court. This provision no doubt relates to the proceedings in a suit, but Section 141 deals with miscellaneous proceedings. The wordings of Section 141 clearly lay down

that the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. The proceedings for temporary injunction are miscellaneous proceedings which are separately registered and decided by a separate order. Any order passed under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order is appealable under Clause (r) of Order 43, Rule 1, C.P.C. Any order passed on an application under Order 39, Rule 1 and 2 is temporary in the sense that it remains in force till the final disposal of the suit, but it cannot be lost sight of that such order has a very important effect and bearing as the main suit takes long number of years before final decision. Such order passed on an application for temporary injunction has even more important bearing and effect in a suit for permanent injunction. Sometimes the Court has to pass an order in the form of mandatory injunction on an application for temporary injunction in order to meet the ends of justice.

8. Mr. Kamlakar Sharma, learned counsel for the defendant submitted that the plaintiff may delay the proceedings by filing a rejoinder because he obtains an ad interim order in his favour from the Court. I see no force in this contention. Firstly, the contingency of filing a rejoinder does not arise in every case, because it would arise only in such cases where some new plea or fact is introduced by the defendant in his reply. Apart from that there is already a check that it can be presented only with the leave of the Court and upon such terms as the Court thinks fit. Thus, in a given case if the Court is satisfied that the rejoinder is filed mala fide in order to delay the proceedings, the court can refuse to grant leave or may compensate the defendant by imposing cost or may put any terms which the Court thinks fit in the circumstances of that case, Mr. Sharma, learned counsel for the defendant himself conceded that the plaintiff was entitled to file a fresh affidavit but his objection was that subsequent pleading cannot be introduced by a rejoinder. I see no valid reason as to how the filing of fresh affidavit will not delay the proceeding while filing of rejoinder will do so.

9. The wordings of Section 141 are clear to the effect that the procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable in all the proceedings. The words 'as far as it can be made applicable' cannot be given a narrow interpretation. The procedure provided both for the trial of a suit or

miscellaneous proceeding is meant for finding out the truth and to do justice. The procedure is always a handmaid of justice and full opportunity should be given to the parties to bring forth their case before the Court, unless such procedure is specifically prohibited under the law. So far as the explanation to Section 141 is concerned the proceedings under Order IX have been included within the expression 'proceedings' and any proceeding under Article 226 of the Constitution has been specifically excluded. Thus, if proceeding under Order IX has been included then it does not mean that it would not include other miscellaneous proceedings. The only restriction in applying the procedure provided for the suits to the miscellaneous proceedings would be to see 'as far as it can be made applicable.'

10. If we consider the problem from another angle then also the result would be the same. The Court may ask the defendant to file the written statement first before passing any order on the application for temporary injunction. In such a case the plaintiff becomes entitled to file subsequent pleading under Order 8, Rule 9 itself and that being so I see no reason as to how the plaintiff can be denied his right to file a rejoinder in the case of proceedings for temporary injunction by resorting to the provisions of Order 8, Rule 9 read with Section 141, C.P.C.

11. I shall now discuss the cases cited at the bar. In *Ganpat Kinushet Sonar v. Vithal Bhikan Patil*, AIR 1942 Bom 57, it was observed as under:

'But in the view we take it is not really very material whether an application to file an award is to be regarded as a suit within the meaning of this rule or not. The rule is essentially a rule of procedure, and it would seem that it would be applicable under Section 141 of the Code, whether an application is to be regarded as a suit or not.'

12. In *Ram Chandra Aggarwal v. State of Uttar Pradesh*, AIR 1966 SC 1888, it was observed as under :

'The next contention and it was the one pressed strenuously by him was that a proceeding upon a reference under Section 146(1) entertained by a Civil Court not being an original proceeding the provisions of Section 141, C.P.C. are not

attracted and that, therefore, those provisions of the Civil Procedure Code which relate to suits are not applicable to a proceeding undertaken by a Civil Court upon a reference to it under Section 146(1) of the Code of Criminal Procedure. A number of cases dealing with this point were brought to our notice either by him or by Mr. Goyal. It , seems to us, however, that those cases are not relevant for deciding the point which is before us. In passing, however, we may mention the fact that a Full Bench of the Allahabad High Court has held in *Maha Ram v. Harbans*, ILR(1941) All 193 : AIR 1941 All 101 (FB) that the Civil Court to which an issue on the question of proprietary rights has been submitted by a revenue Court under Section 127 of the Agra Tenancy Act, 1926 has jurisdiction to refer the issue to arbitration under para 1 of Schedule II of the C.P.C. This decision is based upon the view that by virtue of Section 141, C.P.C. the provisions relating to arbitration contained in the second schedule to the Code of Civil Procedure, before the repeal of that schedule, applied to a proceeding of this kind, similarly recently this Court has held in *Munshi Ram v. Banwari Lal*, AIR 1962 SC 903 that under Section 41 of the Arbitration Act and also under Section 141, C.P.C. it was competent to the Court before which an award made by an arbitration tribunal is filed for passing a decree in terms thereof to permit parties to compromise their dispute under Order XXIII, Rule 3, C.P.C. Though there is no discussion, this Court has acted upon the view that the expression 'Civil Proceeding' in Section 141 is not necessarily confined to an original proceeding like a suit or an application for appointment of a guardian etc, but that it applies also to a proceeding which is not an original proceeding. Thus, though we say that it is not necessary to consider in this case whether the proceeding as contemplated by Section 141 or not there is good authority for saying that it is a civil proceeding. All that we are concerned with in this case is whether the provisions of Section 24(1)(b) of the Code of Civil Procedure available with respect to a proceeding arising out of a reference under Section 146(1), Cr. P.C.

13. A Full Bench of the Madhya Pradesh High Court in *Nathu Prasad v. Singhai Kapurchand*, AIR 1976 Madh Pra 136 held that an application under Order 9, Rule 9, C.P.C. is a proceeding in a Court of Civil Jurisdiction within Section 141. The object and purpose of Section 141 is that for economy of words it was unnecessary to repeat the whole of the proceeding for procedure for an

application or any other proceeding original or ancillary. An application under Order 9, Rule 9 is not an interlocutory application. By its nature, an application under Order 9, Rule 9, is an independent application and is registered as an independent Misc. Judicial case. Hence an application to restore application which was dismissed for default which application had been made for setting aside the dismissal of a suit for default.

14. In the above Full Bench case reliance was placed on AIR 1962 SC 903, AIR 1966 SC 1888, AIR 1966 Andh Pra 263 and AIR 1969 Guj 308, AIR 1968 Bom 250 was held not good law in view of AIR 1966 SC 1888.

15. In *Narain Singh v. Ram Gopal Madan Lal*, AIR 1981 Delhi 88, it was held as under :

'Along with a suit filed for a declaration under the Arbitration Act, the plaintiff (Appellant) filed an application for injunction under Order 39, Rule 1 and 2 restraining the defendants from proceeding with arbitration. On contest by the defendants the Counsel for the plaintiffs did not press his application and got it dismissed by the Court. There was no prayer for leave to file a fresh application on the same cause of action. The plaintiffs again filed a fresh application for injunction which was dismissed by the Court for want of a prima facie case having been made out by the plaintiffs and also on the ground that no irreparable injury would be caused to the plaintiffs if the relief of injunction was not granted. On appeal by the plaintiffs against the order of dismissal of the application it was held that the said application for temporary injunction decided by the impugned order was barred under Order 23, Rule 1(4) read with Section 141 which made the procedure applicable to suits applicable to all Civil proceedings such as an application of injunction. Hence the plaintiff's application was not maintainable.'

16. The above cases clearly related to an application of injunction and it was held that the provisions of Order 23, Rule 1(4) read as Section 141 were applicable to all civil proceedings such as an application of injunction.

17. Mr. Sharma, learned counsel for the defendant placed reliance on *Abdul Satar v. Jankivallabh*, AIR 1961 Raj 245. In the above case I. N. Modi J took the view

that Section 141 was meant to include original matters in the nature of suits viz; matters which originate themselves and not those which spring up from a suit or some other proceeding or arising in connection therewith. With great respect the above view is no longer good in view of the clear pronouncement of their Lordships of the Supreme Court in Ram Chandra Aggarwal v. State of Uttar Pradesh, (AIR1966 SC 1888) (supra). Mr. Sharma also placed 'reliance on Dokku Bhushyya v. Katragadde Ramkrishnayya, AIR 1962, SC 1886. In the above case it was held as under :

'This view has ever since been followed. We have already held that the application by the judgment-debtor to set aside the sale in a proceeding in execution and, therefore, Section 141 of the Code will not apply for two reasons, namely, (1) as execution proceedings were continuation of suit within the meaning of Order XXXII, Rule 7 of the Code, and as the Code provided specifically for suits, Section 141 could not be invoked; and (2) as we have held, an application by a judgment-debtor to set aside a sale is a proceeding in execution and therefore Section 141, which applies only to original proceedings, does not apply to such proceedings.'

18. The above case is clearly distinguishable inasmuch as their Lordships were considering the question of applicability of Section 141 to proceedings in execution. In respect of the execution proceedings it was held that the Code provided specifically for the suits and as such Section 141 cannot be invoked. It was further held that an application by a judgment-debtor to set aside a sale is a proceeding in execution and therefore Section 141 which applies only to original proceedings does not apply to such proceedings. In this case their Lordships have used the term original proceeding in contradistinction to execution proceeding. In the case in hand before me there is no dispute that the suit for permanent injunction is pending and application for temporary injunction is a miscellaneous proceeding in that suit. In this view of the matter, I am clearly of the view that the aforesaid authorities relied upon by Mr. Sharma, learned counsel for the defendants do not assist him in the controversy raised in the present case.

19. In the result both these revision petitions are allowed, the orders passed by the trial Court are set aside and taking in view the facts and circumstances of these

cases, leave is granted to the plaintiffs for filing the rejoinder under the provisions of Order 8, Rule 9 read with Section 141, C.P.C. The parties shall bear their own costs.

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