SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Smt. Krishna Devi Vs. Raj Kumar and anr.

Smt. Krishna Devi Vs. Raj Kumar and anr.

SooperKanoon Citation : sooperkanoon.com/751645

Court : Rajasthan

Decided On : Aug-23-1984

Reported in : AIR1986Raj72

Judge : S.K. Mal Lodha, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 2(9) - Order 8, Rules 1 and 10

Appeal No. : Civil Regular First Appeal No. 19 of 1984

Appellant : Smt. Krishna Devi

Respondent : Raj Kumar and anr.

Advocate for Def. : C.D. Moondra and; P.K. Bhansali, Advs.

Advocate for Pet/Ap. : N.N. Mathur, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Mal Lodha, J.

1. This appeal under Section % of the C.P.C. 1908 has been filed against the judgment and decree dt. March 2, 1984 of the District Judge, Bikaner by the defendant 1 --appellant Smt. Krishna Devi. .

2. Plaintiff-respondent 1 instituted a suitagainst the defendant 1 Smt. Krishna Devi and defendant-respondent 2 Bank of Baroda, Branch, near Railway Station, Bikaner praying that a sum of Rs. 71,000/- deposited in Fixed Deposit Receipts with the Bank of Baroda be got realised by him though the Fixed Deposit Receipts stood in the names of the plaintiff, his son Pawan Kumar(deceased) and defendant 1 Smt. Krishna Devi (widow of Pawan Kumar). It was averred by the plaintiff that defendant 1 had no title and interest in the amounts of the Fixed Deposit Receipts and hence she is not entitled to get the amount of Rs. 71,000/- and interest thereon amounting to Rs. 2,000/- and also subsequent interest. Summons was issued to defendant 1 in the prescribed form under Order V, Rules 1 and 5C.P.C. It was interalia. stated in the summons that was issued to defendant 1 for the hearing of Oct. 20, 1983 as follows :

^^vki U;k;ky; esa Lo;a ;k fdlh ,slsIyhMj }kjk milatk gks ldrs gSa ftls lE;d~ vuqns'k fn;s x, gks vkSj bl oknls lacaf/kr lHkh lkjoku iz'uksa dk mRrj ns lds A vkidks ;g funsZ'k Hkh fn;k tkrkgS fd vki ml fnu viuh izfrj{kk dk fyf[kr dFku nkf[ky djs vkSj ml fnu lc nLrkosttks vkids dCts ;k 'kfDr esa gks] is'k djs A**

Summons was refused by her and therefore it wasaffixed at her residence. Nobody appeared on her behalf on Oct. 20, 1983. The trial Court ordered that one summons may be sent by registered post acknowledgement due. Thereafter, on Nov. 17, 1983, appearance was put in on behalf of defendant No. 1 and an adjounment was sought for filing the written statement. On Jan. 6, 1984, Feb. 8, 1984 and Feb. 20, 1984, adjournments for filing written statements were sought and they were granted. It will be relevant here to quote the material part of the ordersheet dt. Feb. 20, 1984 which relates to the grant of adjournment for filing written statement on certain conditions:

^^vUr esa cM+h eqf'dy odhyoknh vodk'k rd ekSdk vkSj tckc&nkok; iS'k djus dk oDr pkgs QsgfjLr ij ns fn;ktkos izksfotuy 'kh?kz ml fnu tckc vodk'k ns vkSj ekSdk ij ns mUgksaus ;g Hkhdgk fd ;fn vxyh rkjh[k ij tckc u ns rks vksMZj 8 :y 1 ,oa 10 lh- ih- lh- dsvuqlkj nkok oknh fMxzh fd;k tk;s A ;ksX; odhy izfrokanh dks iw.kZ :i;s A eatwjgS A

Qyr% muds }kjk pkgh xbZ rkjh[k1&3&84 dk 10 iS- gtkZuk ij ekSdk fn;k tkrk gS A D;ksafd ikap iSls dkflDdk can dj fn;k x;k gS A fely fnukad 1&3&84 dks is'k gks A**

The date fixed for the filing of the written statement was March 1, 1984, March 1. 1984 was a Gazetted holiday on account of Mahashivratri. The case was taken up on March 2, 1984. On that date, learned counsel for the defendant 1 again sought time for filing the written statement, which was opposed by the plaintiff's counsel. The learned District Judge after hearing the parties did not consider it proper to grant any more opportunity to defendant 1 in the interest of justice. After hearing the parties, he pronounced the judgment and passed the decree under Order VIII, Rule 10 C.P.C. on March 2, 1984.

3. Being dissatisfied, defendant 1 has filedthis appeal as aforesaid.

4. A show cause notice was ordered to be issued to the respondents on March 20, 1984. On April 26, 1984, learned counsel appearing for the plaintiff-respondent 1 submitted that the case may finally be disposed of at the admission stage. Mr. P.K. Bhansali, learned counsel appearing for defendant 2 had no objection to this course being adopted. It was, therefore, ordered that the case may be listed for admission soon after the receipt of the record for final disposal at the admission stage. Record had been received.

5. The appeal was filed on March 15,1984. On March 20, 1984, affidavit of defendant 1 (appellant) Smt. Krishna Devi along with certain documents was filed. It appears that plaintiff-respondent 1 filed an application on April 26, 1984 supported by affidavit of Shri Nirmal Kumar Sharma son of Shri Raj Kumar Sharma along with some documents. Affidavit of Shri Dwarka Prasad Joshi, Advocate of defendant 1 was filed on May 23, 1984 stating the circumstances under which the written statement was not filed on March 2, 1984. On behalf of plaintiff-respondent 1, affidavits of Shri Nirmal Kumar and Hargopal, Advocates were filed on Aug. 6,1984. Thereafter, on Aug. 7, 1984, affidavit of defendant 1 Smt. Krishna Devi was filed.

6. I have heard Mr. N.N. Mathur. learned counsel for the appellant, Mr. C.D. Moondra, learned counsel for respondent 1 and Mr. P.K. Bhansali, learned counsel for respondent 2.

7. It was urged by the learned counsel for the appellant that the learned District Judgeerred in pronouncing the judgment and passing the decree in favour of the plaintiff-respondent on March 2, 1984 as the written statement was not filed on behalf of the defendant 1 in pursuance of the directions/order made on Feb. 20, 1984. On the basis of the affidavits of Smt. Krishna Devi (defendant 1) and Shri Dwarka Prasad Joshi, Advocate of defendant 1, the application dt. Oct. 19, 1983 (Annexure-1) which was submitted by defendant 1 to the Superintendent of Police. Bikaner, Medical Certificate of sickness (Annexure-2) dt. Jan. 16. 1984 and the letter (annexure-3) dated February 28, 1984 which was written by Shri Dwarka Prasad Joshi, Advocate to Shri Sharmaji, learned counsel appearing for the appellant submitted that there were reasons for not filing the written statement in pursuance of the order dt. Feb.20, 1984 and that as March 1, 1984 was a Gazetted holiday, the learned D.J. should have accepted the request for adjournment for filing of the written statement that was made on March 2, 1984. Learned counsel further submitted that as March 1, 1984 was a Gazetted holiday and when the case was taken up on March 2, 1984, District Judge should have acceded to the prayer for adjournment and ought not to have exercised his discretion in pronouncing judgment and passing decree under Order VIII, Rule 10 C.P.C.

8. On the other hand, Mr. C. D. Moondra, learned counsel appearing for the plaintiff-respondent 1 referred to the various ordersheets of the case for showing that the time was granted to the defendant 1 on various dates for filing the written statement and on Feb. 20, 1984, learned counsel for defendant No. 1 volunteered that if an adjournment is granted to him on payment of costs and the written statement is not filed by the next date, the suit of the plaintiff may be decreed in accordance with Order VIII, Rule 10 C.P.C.

9. I have considered the rival contentions advanced by the learned counsel for the appellant and respondent 1.

10. The short question is whether the learned District Judge was right in pronouncing the judgment and passing decree against defendant 1 on March 2, 1984 or he should have granted time to defendant No. 1 for filing written statement.

11. It will be relevant here to refer Order VIII, Rule 10 C.P.C. which is as follows :

'Order VIII, Rule 10 C.P.C. : Procedure when party fails to present written statement called for by Court.

Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up.'

Order VIII, Rule 10 C.P.C. empowers the Court, in case of a failure of any party from whom the written statement within the time allowed by the Court is required under Order VIII, Rules 1 and 9 C.P.C. to pronounce judgment or make such orders in relation to the suit as it thinks fit.

12. While considering the provisions of Order VIII, Rule 10 C.P.C. as they stood then, their Lordships of the Supreme Court in Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425 observed as under :

'What those consequences should be in a given case is for the Court, in the exercise of its judicial discretion, to determine. No hard and fast rule can be laid down. In some cases, an order awarding costs to the plaintiff would meet the ends of justice; an adjournment can be granted or a written statement can be considered on the spot and issues framed. In other cases, the ends of justice may call for more drastic action.'

In Mathew Alenjical v. N.R.C.D. Corporation AIR 1978 Madh Pra 39 Order VIII, Rules 1 and 10 C.P.C. (as amended by Act No. 104 of 1976), the question arose while dealing with the consequences of non-filing of written statement as required by Rule 1 whether the Court is obliged to decree the suit without any discretion to

pass any other order. The learned Judge observed as follows:

'This rule provides the consequences of non-filing of the written statement as required by Rule 1 or Rule 9. In the present case, we are not concerned with Rule 9. The amendment made in this rule leaves no doubt that it applies also to a case of non-filing of written statement as required by Rule 1. The Rule no doubt, says initially that the Court shall pronouncejudgment against the defendant on his failure to file the written statement required under Rule 1 or Rule 9 but it then proceeds to enable the Court 'to make such order in relation to the suit as it thinks fit.' The use of the word 'or' which is normally disjunctive, after 'shall' pronounce judgment against him,' to separate it from the words 'make such order in relation to the suit as it thinks fit' shows that the discretion of the Court has been retained in such a situation as well. Moreover, the latter expression would be redundant and meaningless if the Court had no option except to pronounce judgment against the defendant. There is no reason why the word 'or' should not be given its plain and ordinary meaning as a disjunctive to indicate that the two powers contained in the rule before and after that word were meant to lay down distinct and separate powers leaving the discretion to the Court to exercise one or the other depending on the facts of a particular case. The rule of harmonious construction also requires such a meaning to be given to Rule 10. As already noticed, on failure of the defendant to file the written statement required under Rule 1, the Court's power under Sub-rule (2) of Rule 5 is attracted which gives a discretion to the Court to either pronounce a judgment in plaintiff's favour for mere non-filing of the written statement or not to_ do so, depending on the facts of a particular case. If Rule 10 is construed to mean that it leaves no discretion with the Court on defendant's failure to file a written statement under Rule 1 and the Court must necessarily pronounce judgment against the defendant for that reason alone, then sub-rule (2) of Rule 5 and Rule 10 also cannot be reconciled. As already pointed out, the plain meaning of Rule 10 giving the word 'or' occurring therein its ordinary meaning as a disjunctive instead of needlessly reading it as 'and' leaves a discretion with the Court and on that construction, there is no disharmony between these two provisions. For this reason also the plain meaning of the rule leaving a discretion with the Court must obviously be preferred.'

It was further observed as under :

'Rule 10, therefore, in its ordinary meaning gives the Court a discretion either to pronounce judgment against the defendant on mere non-filing of the written statement or to make such order in the suit as it thinks fit. This would mean that the Court may in its discretion even grant more time to the defendant by adjourningthe case. What really matters is that the Court is not obliged necessarily to pronounce judgment against a defendant merely because the defendant has failed to file the written statement within the time given by the Court. It follows that the Court must first decide the question whether a case for granting more time for filing the written statement is made out or not. It is only when the defendant's prayer for grant of more time for filing the written statement has not been refused, the question of pronouncing judgment against him for non-filing of the written statement or making any other order in relation to the suit, such as for exemple, requiring proof of the facts otherwise than by such admission, can arise. Each case has obviously to be decided on its own facts.'

The scope of Order VIII, Rules 1 and 10 C.P.C. has been summarised as under :

'The net result of these provisions is that the defendant must, under sub-rule(1) of Rule 1 file his written statement within the time allowed for this purpose by the Court; on failure of the defendant to file the written statement within the time allowed, the Court has the power to pronounce judgment against him for mere non filing of the written statement; the Court has, however, a discretion in the matter to be exercised judicially on the facts of each case and it is not incumbent on the Court to pronounce judgment against the defendant simply because he has failed to file the written statement as required under Rule 1; the Court in its discretion is empowered to make any order in relation to the suit as it thinks fit when such a situation arises; the Court can in its discretion even grant a further adjournment for filing the written statement and when the Court does not consider it a fit case for grant of further time to file the written statement, any other order which the Court considers proper in a particular case can be passed, such other order after refusing further time to file the written statement, may even be of requiring the plaintiff to prove the plaint averments notwithstanding the absence of the written

statement, as laid down in Sub-rule (2) of Rule 5.'

Keeping the aforesaid principles in view with which 1 respectfully agree, I proceed to examine the question involved in this appeal.

13. On Feb. 20. 1984, the next date fixedwas March 1, 1984 for filing the written statement. It was Gazetted holiday on account of Mahashivratri. The case was taken up on March 2, 1984, Rule 11-A of the General Rules (Civil), 1952 provides that if a case is fixed for a day on which the Court does not sit on account of its being later found or declared to be a holiday, the case will be taken up on the next day on which the Court sits. It was permissible' for the Court to take up the case on March 2, 1984, for, a fresh notice or intimation of the date of hearing is not contemplated when the date fixed in the case is a holiday. On March 2. 1984, learned counsel for defendant 1 prayed for granting opportunity for filing the written statement. As the prayer was opposed by the learned counsel for the plaintiff, the learned District Judge was of the opinion that it wilt not be in the interest of justice to grant any more opportunity to defendant 1. The learned District Judge has of course given reasons for not granting the adjournment in the judgment under appeal. It may be stated that Mr. D.P. Joshi, Advocate who was engaged by defendant 1 in the trial Court has filed an affidavit in this Court that March 1, 1984 was declared holiday, that he was under the bona fide impression that the case on the next working day will be adjourned to some other date howsoever short. He also prayed for a day or two days' adjournment for filing the written statement even an payment of costs for the reason that defendant 1 Smt. Krishna Devi had been recently posted at Jodhpur and her Jodhpur address was not in his knowledge. He has further stated that the document on the basis of which the suit was filed is forged and that steps for obtaining the hand-writing expert's opinion can only be taken after the written statement is filed. Mr. Hargopal, Advocate who was engaged on behalf of the plaintiff in the trial Court has stated in his affidavit which was filed in this Court on Aug. 6, 1984 that in the Court of District Judge, Bikaner, cause list is prepared on the previous day and affixed on the notice Board and if any counsel or parties want to ascertain about the case, it can easily be found out. He denied that from the side of defendant 1, it was suggested that the document in the suit is a forged one. As such further

question is whether in the aforesaid facts and circumstances, the learned District Judge was right in pronouncing the judgment and passing the decree on March 2,1984or he should have adjourned the case.

14. Having considered the affidavits and the documents filed in this Court, I am of opinion that the learned District Judge should not have proceeded to pronounce judgment under Order VIII, Rule 10 C.P.C. on March 2, 1984 when the date fixed (March 1, 1984) was a Gazetted holiday. He should have exercised his discretion in granting an adjournment.

15. I have also considered the judgment under appeal. Order VIII, Rule 10 C.P.C. contains the words 'that the Court shall pronounce the judgment'. 'Judgment' has been defined in Section 2(9) C.P.C. It is as follows :

'Judgment means the statement given by the Judge on the grounds of a decree or order;'

The learned District Judge has merely mentioned in the judgment under appeal that the suit of the plaintiff is decreed under Order VIII, Rule 10 C.P.C. It is silent with respect to the statement of the grounds on which the decree is passed.

16. Rules of procedure are hand-maid of justice and they should not be applied to defeat the ends of which they seek to achieve. Defendant 1 should get a fair chance to contest the suit filed by the plaintiff.

17. The result is that I allow the appeal, set aside the judgment and decree dt. March 2, 1984 and remand the suit to the learned District Judge, Bikaner with a direction to accept the written statement of defendant 1, if it is submitted by Sept. 3, 1984. The written statement will be accepted on the condition that Rs. 1500/- are paid as costs to the plaintiff or his counsel against a receipt and if costs are not accepted, the amount will 'be deposited and the receipt shall be filed with the written statement. Thereafter, the District Judge will proceed with the trial of the suit in accordance with law and conclude it and decide the suit within a period of three months from the date of the filing the written statement. If the written statement is not filed and costs are not paid, the learned District Judge will decide

the suit afresh in accordance with law keeping in view the provisions of Order VIII, Rule 10 C.P.C. and the observations made hereinabove.

18. The parties are directed to appear in the Court of District Judge on Sept. 3, 1984. The record shall be returned to the District Judge. Bikaner forthwith.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com