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Court : Rajasthan

Decided On : Jul-19-1968

Reported in : AIR1969Raj112

Judge : C.B. Bhargava, J.

Acts : Limitation Act, 1908 - Sections 4; Rajasthan General Clauses Act, 1955 - Sections 11; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 10

Appeal No. : Civil Revn. No. 315 of 1965

Appellant : Ladulal

Respondent : Keshavdas

Advocate for Def. : Pyarelal Ojha, Adv.

Advocate for Pet/Ap. : N.M. Kasliwal, Adv.

Disposition : Revision allowed

Judgement :

ORDER

C.B. Bhargava, J.

1. This revision application is directed against the order dated 6th March, 1965, of the learned District Judge, Jhun-jhunu by which the petitioner's appeal was

rejected and the order passed by the Civil Judge, Sikar dated 18th November, 1963, was upheld,

2. The facts giving rise to the present application may briefly be stated as under; Keshavdas opposite party in this case filed a suit for recovery of Rs. 3176/- against Ladnlal petitioner in the court of the Civil Judge, Sikar. The petitioner filed his written statement in the suit, issues were also framed and on 17th September, 1962, when evidence of two witnesses of the plaintiff was to be recorded he did not put in appearance in the court and his counsel also pleaded no instructions. The court then proceeded to record the evidence of the plaintiff and decreed the suit with costs on the same date.

3. The petitioner then made an application before the Civil Judge for setting aside the ex parte decree which was rejected. He then preferred an appeal against the said order to the court of the District Judge, Jhunjhunu and the learned District Judge after hearing the parties passed the following order:

'I, therefore, accept this appeal and order that the case be remanded to the lower court for further enquiry into the application of Ladulal dated 12-10-62 on payment of Rs. 50/- as costs to the respondent Kesavdass. If the costs are not paid or deposited in the court of Civil Judge, Sikar within a period of 30 days to be paid to the respondent, this appeal of the appellant Ladulal would stand dismissed.'

It is not in dispute that in compliance of this order the petitioner sent a money order of Rs. 50/- on 16th September, 1963 to the court of the District Judge, Jhunjhunu which was received in that court on 19th September, 1963.

However, this fact that such deposit had been made in the court of the District Judge was not communicated to the Civil Judge, Sikar either by the petitioner or by the District Judge, Jhunjhunu. When the record of the case was received in the court of the Civil Judge, he recorded an order on 29th August, 1963, that it might be submitted before him on 21st September, 1963 after the period for depositing the costs expired. On 21st September, 1963, the learned Civil Judge was not at the headquarters. The file was, therefore, submitted before him on 12th October, 1963 and On this date only the counsel for the non-petitioner was present while

the petitioner and his counsel were absent. The learned Judge on that date passed an order that as the order passed by the learned District Judge on 20th August, 1963, had not been complied with, the suit cannot be restored to its original number. Subsequently, on 24th October, 1963, the petitioner made an application before the court stating that he had complied with the order of the District Judge inasmuch as he had sent the amount of Rs. 50/- by money order to that court and was also received there on 19th September, 1963 and, therefore, the suit might be restored and enquiry be made as directed by the District Judge. He also submitted the postal acknowledgment receipt along with the application.

The learned Civil Judge rejected this application on 18th November, 1963 holding that according to the direction of the District Judge the amount of Rs. 50/- ought to have been deposited in his court and not in the court of the District Judge and as such the order had not been complied with.

Against this order the petitioner again preferred an appeal in the court of the District Judge. The learned District Judge rejected the appeal holding that the order passed by him on 20th August, 1963, had not been strictly complied with, as the amount of Rs. 50/- instead of being deposited in the court of the Civil Judge was deposited in his own court. He also referred to *Surajpal Singh v. Deokali*, AIR 1926 Oudh 481; *L. P. Jain v. Nandakumar R. Taliwalla*, AIR 1961 Bom 254 and *P. Nasar Saheb v. P. Nabi Saheb*, AIR 1957 Andh Pra 780 for the view that he had no power to extend the time for the deposit of costs as he had become *functus officio* and the order of dismissal of appeal has automatically come into force on the expiry of 30 days.

Against this order this revision petition has been preferred by the petitioner and it has been contended that substantial compliance of the order passed by the District Judge had been made by the petitioner inasmuch as he had deposited Rs. 50/- within the time fixed by the court, in the court of the District Judge and that being so both the courts were in error in holding that the order was not complied with merely on the ground that the amount instead of being deposited in the court of the Civil Judge was deposited in the court of the District Judge. Learned counsel for the non-petitioner has raised two principal objections viz.,

(1) that no appeal lay to the District Judge against the order passed by the Civil Judge on 18th November, 1963 and at any rate the Civil Judge had decided the matter finally on 12th October, 1963, against which no appeal was preferred.

(2) that the amount of costs was not deposited in the court of the Civil Judge as ordered by the District Judge and it was also not deposited within 30 days from 20th August, 1963. In this connection he says that the last date for depositing the amount was 18th September, 1963.

4. I have heard learned counsel for the parties and in view of the objections raised by the learned counsel for the opposite party, the first question to be determined is whether the amount of costs was deposited within the time fixed by the order dated 20th August, 1963. In this connection learned counsel for the petitioner has pointed out that even if the time be computed from the date of the order dated 20th August, 1963, the last date for the deposit would be 18th September, 1963. But that day was a public holiday and as such the amount deposited on 19th September, 1963, should be deemed to have been deposited within time.

5. In my view this contention of the learned counsel for the petitioner must prevail. Though Section 4 of the Limitation Act and Section 11 of the Rajasthan General Clauses Act, 1955 may not apply in terms to a situation like this, but they embody the general principles enshrined in two maxims:

(i) *lex non cogit ad impossibilia* -- i. e. the law does not compel a man to do that which he cannot possibly perform.

(ii) *Actus curiae neminem gravabit* -- i. e. an act of the Court shall prejudice no man and the petitioner can rely on the said general principles embodied in the two provisions. See *M. Muhammad Jan v. Shiam Lal*, AIR 1924 All 218 (FB), *Chinna Nadar v. A. R. V. Arumugham Chetti*, AIR 1927 Mad 1196, *Premchand Bhikabhai v. Ramdeo Sukhdeo Marwari*, AIR 1949 Nag 141, and *Rambir Narhargir v. Prabhakar Bhaskar*, AIR 1955 Nag 300. Since 18th September, 1963, was a holiday and the court was closed the amount of costs deposited on the opening of the court on 19th September, 1963, shall be within 30 days from 20th August, 1963.

6. The next question is whether the order passed by the Civil Judge on 18th November, 1963, was appealable and whether, if at all, any appeal lay against the order of the Civil Judge, it should have been directed against the order passed by him on 12th October, 1963. In my view the period of limitation for filing an appeal would not run against the petitioner from 12th October, 1963 because the order was passed in his absence. The petitioner having complied with the order passed by the District Judge must have been under the impression that he will receive a notice from the court of the civil Judge of the date fixed by him for further enquiry. It, therefore, cannot be said that appeal should have been preferred against the order of that date.

7. Whether the order passed on 18th November, 1963, was appealable is the next question. The petitioner by his application had requested the court to set aside the ex parte decree because in his view he had complied with the order passed by the District Judge. But the learned Civil Judge holding that the order of the District Judge had not been complied with refused to restore the suit to its original number and to take any further action as directed by the learned District Judge. In my view the only reasonable interpretation of this order would be that the learned Civil Judge again refused to set aside the ex parte decree which was sought for in appeal by the petitioner before the District Judge and on which a conditional order was passed on 20th August, 1963. That being so, I am of the view that the order dated 18th November, 1963, was appealable.

8. Now the question is whether the petitioner had complied with the order passed by the District Judge or not. Both the courts below have taken the view that he had not, because the amount of Rs. 50/- should have been deposited in the court of the Civil Judge and not in the court of the District Judge. This was the only question which the learned District Judge ought to have considered as there was no application before him for extending the period fixed by him for the deposit of the amount of costs. Therefore, the cases referred to by the learned District Judge in his order do not have any bearing upon the question which in fact required consideration. The learned District Judge by his order directed

(1) that the petitioner should pay Rs. 50/- as costs.

(2) that it should be paid or deposited within 30 days.

(3) that in case they are not paid, they should be deposited in the court of the Civil Judge, Sikar.

9. Now the petitioner did deposit Rs. 50/- and also within time prescribed by the court, but he did not comply with the third condition i. e., of depositing it in the court of the Civil Judge. Though strictly speaking he has not complied with the order because he was directed to deposit the amount in the court of the Civil Judge, but to my mind the main object underlying the order was that Rs. 50/- be paid as costs to the non-petitioner and that too within 30 days. Now take for instance if the direction would have been to pay the amount to the party directly and the other party without tendering that amount to the party concerned deposited it in the court for being paid to him whether under such circumstances would it be argued with any plausible justification that the order had not been complied with ?

In the present case also I do not see why the deposit made in the court of the District Judge be not taken as sufficient compliance of the order. The petitioner could not have been motivated by any mala fide intention. Instead of sending the money order to the court of the District Judge he could very well have sent it to the court of the Civil Judge. But it seems, to me that due to some misunderstanding he sent the amount to the court of the District Judge as it was that court which had ordered the payment of costs. The Supreme Court in *Ram Das v. Ganga Das*, AIR 1961 SC 882, observed:

'How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decree apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed.'

10. These observations were made in a Case where the High Court of Patna had directed the party to pay deficit court-fee within a fixed period, and that party had applied for extension of time on the last day when the period was to expire. The application for extension of time could not be heard because the Division Bench which was competent to pass orders on it was not sitting in those days. When the matter came up before the Division Bench it refused to extend time.

11. So it will appear that the order passed by the District Judge is also 'in essence in terrorem'. But here the party has made no default. It complied with the order substantially within time fixed by the Court and in my view too narrow a construction should not be put on the order of the District Judge because that would instead of advancing the cause of justice hamper it.

12. The result therefore, is that the revision application is allowed, orders of the courts below are set aside and the learned Civil Judge, Sikar is directed to take further proceedings in accordance with law as directed by the learned District Judge in his order dated 20th August, 1963. No order as to costs.