

Ramchand Vs. Laxmikumar

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Court : Rajasthan

Decided On : Sep-17-1979

Reported in : AIR1980Raj128

Judge : G.M. Lodha, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115(1)

Appeal No. : Civil Revn. No. 363 of 1979

Appellant : Ramchand

Respondent : Laxmikumar

Advocate for Def. : P.C. Jain,; Shanker Birmiwal,; M.M. Nagayach, Advs.

Advocate for Pet/Ap. : M.I. Khan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

G.M. Lodha, J.

1. Heard learned counsel for the parties. In this case the defendant-petitioner has filed this revision application under Section 115 C.P.C. against the order dated 27-4-1979. On this date the defendant wanted to examine one more witness Shiv

Kumar in spite of the fact that on an earlier date of hearing, he had mentioned before the court that he wants to examine now Kajod only. An oral prayer was made for examining Shiv Kumar on 4-4-79 but the same was rejected.

2. The order-sheet dated 4-4-79 is as under

(Matter in Hindi omitted.--Ed.)

3. On 4-4-79 the evidence of the defendant was also closed after Kajod was examined, then the prayer to examine Shiv Kumar was rejected.

4. The order-sheet of 4-4-79 shows that the defendant moved an application for examination of Shiv Kumar even after his evidence was closed and oral request was rejected. The court fixed this application for arguments on 27-4-79.

5. No revision has been filed against the order dated 4-4-79 by which the evidence of defendant has been closed and the oral request of defendant to examine Shiv Kumar was rejected. That order has become final so far as the present revision petition is concerned. In this revision application Mr. Khan appearing for the petitioner has submitted that the witness is very material and under Order 16 Rule I-A, C.P.C. since he was present, it was the duty of the lower court to examine him even though earlier, the defendant has mentioned that he would like to examine Kajod only,

6. Mr. Jain, appearing for the respondent-plaintiff has drawn my attention to the judgment of Hon. Justice Joshi dated February 6, 1979 in Narain Lal v. Someshwar Dayal (C. R. No, 62 of 1977 decided on 6-2-1979) (Raj), in the matter of revision application against refusal of the trial court to examine witnesses who were present in the court. In that case, this Court observed as under;

'The question therefore calls for consideration is whether in the facts and circumstances of this case the Court should invoke its revisional jurisdiction. Under Section 115, C.P.C. the High Court shall not invoke the revisional jurisdiction under Section 115 for varying or reversing any order made unless the order by itself disposes of the suit or unless the order if allowed to stand would occasion failure of justice or cause irreparable injury to the party against whom it was made.

Neither of these conditions mentioned in the proviso to Section 115, C.P.C. is satisfied in the present case. Neither the interference with the impugned order would dispose of the suit nor it can be said that the non-interference with it would occasion failure of justice within the meaning of Section 115 of the Code of Civil Procedure inasmuch as the defendant has remedy under Section 105 of the Code where under he can challenge the impugned order in the memorandum of appeal. Whatever sympathies may be for the defendant, looking to the legislative intent contained in Section 115 it is difficult for me to interfere with the impugned order in the revisional side. The learned counsel for the petitioner submits that his one more application dated 15-1-1977 is still pending. The court has to decide that application according to law and whatever arguments are legally permissible, the defendant can raise those arguments before the trial court. With these observations the revision application is dismissed. There shall be no order as to costs.'

7. Mr. Khan submitted that this judgment is distinguishable as in this case the party had an opportunity to examine those witnesses in rebuttal and further because the court was of the opinion that earlier the party concerned was very lethargic, indifferent and negligent in the conduct of the case. He further submitted that this Court has interfered in many cases where the evidence was refused to be recorded by the lower court and he referred to the judgments of this Court in 1977 Raj LW 476, 1971 Raj LW 416, 1965 Raj LW 111 and AIR 1974 Kant 100,

8. I have given thoughtful consideration to the rival contentions of the parties and have also considered the facts and circumstances of this case.

9. The first important feature of this case is that on 4th of April, 1979 the court has passed an express order rejecting the prayer of the defendant to examine Shiv Kumar who was present in the court at that time. Not only that, the court expressly had written the order closing the evidence of the defendant. The defendant has not challenged that order in revision and that has become final so far as revisional jurisdiction is concerned, although that can certainly be challenged in case the final appeal is filed against the final judgment if it goes against the defendant. That being so, under Section 115, C.P.C. it would be improper for this Court now to

reopen that evidence which has been closed by the order dated 4-4-79 which is not under challenge, under the garb of quashing the present order under challenge. In fact the present order is nothing but a reaffirmation of the earlier order dated 4-4-79. That being so, I am not inclined to consider the merits of the controversy about the applicability of Order 16, Rule 1-A, C.P.C.

10. The additional ground for rejecting the revision application is the twofold rider contained in Section 115, C.P.C, Even if it is assumed that there was any error committed in respect of the Jurisdiction, proviso bars the entertainment of the revision, unless either of the two conditions is fulfilled. One of the conditions is that in case the impugned order is set aside, it must result in final disposal of the case. The alternative condition is that the impugned order must be such that if it is not set aside, it would result in failure of justice or irreparable injury to the aggrieved party.

11. In the above cited case, the observations of Hon. Justice Joshi, tantamounts to this that when this order can be challenged in appeal, it cannot be said that this would result in failure of justice or irreparable injury. Implication is very clear that though injury may be caused to the party who may be compelled to file appeal, will it be called irreparable injury? Again, where a party knowing it well, did not produce the evidence at the appropriate time when full opportunity is given and wants to examine the witness at the last hour, and that, too, after making a clear declaration in the court that he would examine only some other witness, primarily sufferance, if any, which the defendant made for, would be due to his own creation. The defendant is to thank his own stars, as he himself is responsible for creating that situation.

12. The judgments referred to by Mr. Khan, are judgments on the point of correctness or otherwise of the recording of evidence or refusal of recording of evidence under Order 16. Undoubtedly interference has been made in revision but the question whether irreparable loss, or failure of justice is caused and if so in what particular circumstances, was neither agitated in those cases nor discussed at length. It is only in the judgment of Narain Lal v. Someshwar Dayal's case that that objection was considered and adjudicated upon after a careful examination

and consideration of the scheme of the proviso to Section 115 and more particularly clause (b) of the proviso which mentions phrase 'failure of justice or irreparable injury'.

13. I have already held in Manzoor Ali's case which was reiterated in Surta' Ram v. State, that in case where all that has been shown, is that there was error of jurisdiction only, a legal inference of irreparable injury or failure of justice, cannot be made as a presumption of law. The petitioner who comes to the court, is required to further show something more for invoking the jurisdiction of the court for proving that there has been failure of justice or irreparable injury. Of course, those observations were in relation to the old Article 226 which has been amended now and these two riders, namely, 'failure of justice' and 'irreparable injury' which were there under Article 226 have now been deleted.

14. I am of the opinion that the same applies to the interpretation of Sub-clause (b) of proviso to Clause (1) of Section 115, C.P.C. The petitioner who comes to this Court for invoking the jurisdiction under Section 115, C.P.C. should by cogent reasons and material on the record, make out a clear case of failure of justice or irreparable injury,

15. For all the above reasons, I am of the opinion that though the impugned order may be challenged in an appeal, if the judgment finally goes against the defendant in the civil suit, there is absolutely absence of proof of failure of justice or irreparable injury in this case, so far as the invoking of jurisdiction of this Court under Section 115, C.P.C. is concerned. That being so, the revision application fails and is hereby dismissed without any order as to costs.