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Court : Rajasthan

Decided On : Apr-19-1971

Reported in : 1971WLN127

Judge : L.N. Chhangani, J.

Appeal No. : S.B. Civil Revision No. 566 of 1970

Appellant : Kusum Kumar

Respondent : Supra Films

Disposition : Application allowed

Judgement :

L.N. Chhangani, J.

1. This is a plaintiff's revision against the order dated 22/8/70 of the Additional District Judge, No. I, Jodhpur, requiring the plaintiff petitioner Kusum Kumar to appear in court for cross examination on his affidavit dated 19/6/70.

2. The plaintiff petitioner filed a suit against the defendant on 19/6/70 claiming certain reliefs. The plaintiff also submitted an application supported by his affidavit for an injunction. The trial court granted an ad-interim injunction against the defendant. On 1/8/70 the defendant while opposing the plaintiff-petitioner's prayer for temporary injunction submitted an application that the plaintiff be permitted to

be cross examined by the defendant's on his affidavit. The trial court allowed the defendant's application and ordered the plaintiff to appear for cross examination. Aggrieved by this order, the plaintiff has approached this Court in revision.

3. It has been contended that the trial court has acted in breach of the express provisions of Order 39 Rule 1 CPC, in requiring the plaintiff to appear for cross examination and consequently, has acted with material illegality and as such, the order requires to be interfered with in the exercise of revisional jurisdiction. Reliance was placed on Kanbi Mavji Khimji and Anr. v. Kanbi Manjibhai Abjibhai and Ors. : AIR1968 Guj198 .

4. The controversy in this connection centres over the issue whether in deciding an application under Order 39 Rule 1 Civil P.C. the provisions of Order 19 Rules 1 & 2 can be pressed into service or not, The precise controversy came before the Gujarat High Court in Kanbi Mavji Khimji and Anr. v. Kanbi Manjibhai Abjibhai and Ors. : AIR1968 Guj198 After considering the combined effect of Section 30 Order 19 Rules 1 & 2, the learned Judge reached a conclusion that only in cases where the court exercises general power of ordering facts to be proved by affidavit either of its own motion or on the application of any party that power is to be exercised, subject to the conditions and limitations' imposed upon it under Order 19, Rules 1 & 2. The court further observed there are some provisions in the schedule where the court has been expressly permitted to decide certain matters on affidavits only and Order 39 Rule 1 was cited as one of the instances of such provisions. The learned Judge further noticed that there is no provision in Order 39 Rule 1 that the exercise of power is subject to the conditions and limitations prescribed in Order 19 Rules 1 & 2 and expressed the opinion that Section 30 gave general power to the courts to get certain facts proved by an affidavit subject of course to the conditions and limitations in Order 19 Rule 1 & 2. In addition to this general power, the Code in some cases confers special powers upon the courts to decide certain matters' on affidavits only. The exercise of this special power, according to the learned Judge, is not subject to the conditions and limitations of Order 19 Rule 1. The eventual conclusion was summed up as follows:

In my opinion, that power, which the Court derives, is a general power and if that power is to be exercised, it is subject to the limitations and conditions prescribed. But when the Court has been given special power to decide certain interlocutory matters by affidavit, that power is unfettered. It is not subject to limitations and conditions prescribed. If really the Legislature intended to place any conditions and limitations, in exercise of that special power also, the Legislature could have used those words in that order like the Order 39, Rule 1 of the Code. The Legislature has, in my opinion, wisely not done it. The object underlying it may be that the rights of the parties in such interlocutory applications are not being decided finally. The parties are not going to suffer as only for certain limited purposes, these interlocutory applications were being decided and the rights of the parties were not being finally decided. That appears to be the reason why no such conditions and limitations have been prescribed in exercise of that special power.

No case taking a contrary view has been cited before me. I have considered the reasoning of the case and the language of Section 30 Order 19 Rule 1 & 2 & Order 39 Rule 1. Order 20 Rule 1 C.P.C. not only does not contain a provision subjecting the exercise of power under it to conditions and limitations prescribed in Order 19 Rule 1 & 2, but further requires the court to be satisfied on affidavit or otherwise and does not require the satisfaction to be derived from proof of facts or production of evidence. It appears fair to infer that having regard to the need of prompt and quick decision as to the grant or refusal of temporary injunctions and the temporary duration of the consequences of the injunctions the Legislature made special provisions in Order 39 Rule 1 for decisions on affidavit and did not favour protracted inquiries involving receipt of evidence in proof of facts. The power given to the courts to act on affidavit by Order 39 Rule 1 is, therefore, of special nature and must be contradistinguished from general power of receiving proof of facts on affidavit and of receiving evidence on affidavits on applications and the conditions and limitations prescribed in connection with the exercise of general power should not be imported in connection with the exercise of special power under Order 39 Rule 1. The lower court acted with illegality in the exercise of jurisdiction in invoking Order 19 Rules 1 & 2 C.P.C. and insisting upon the production of the plaintiff for cross examination.

5. The revision application is allowed. The order under challenge is set aside. The trial court will decide the application after considering affidavits that may be filed by the parties.

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