

Shankar Lal and anr. Vs. Additional District Judge and anr.

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Court : Rajasthan

Decided On : Feb-01-2008

Reported in : RLW2008(2)Raj1386

Judge : Dinesh Maheshwari, J.

Appellant : Shankar Lal and anr.

Respondent : Additional District Judge and anr.

Disposition : Petition dismissed

Judgement :

Dinesh Maheshwari, J.

1. Heard learned Counsel for the petitioners and perused the material placed on record.
2. The petitioners-defendants Nos. 1 and 2 are defending a suit for recovery of possession of immovable property and mesne profits as filed by the plaintiff-respondent No. 2.
3. It appears that the suit was filed in the year 1998; and the petitioners filed their written statement on 10.2.2003. Thereafter, on 8.8.2003, the plaintiff filed certain documents before the trial Court; and filing of such documents was objected to by the petitioners-defendants Nos. 1 and 2. On an application moved by the

petitioners with reference to the provisions of Order 7 Rule 14 read with Order 13 Rule 1 of the Code of Civil Procedure (CPC) in this regard, the learned trial Court by its order dated 14.12.2004 (Annex. 1) refused to take on record the said documents filed by the plaintiff without the permission of the Court. It further appears that the order so passed by the trial Court was challenged by the plaintiff in writ petition, being CWP No. 246/2005, but then, the said writ petition was withdrawn on 19.12.2006 with liberty for the plaintiff to pursue the remedy before the appropriate forum. This Court passed the following order on 19.12.2006 (Annex.2) in the aforesaid CWP No. 246/2005:

Learned Counsel for the petitioner prays for permission to withdraw the petition with liberty to the petitioner to pursue the remedy before the appropriate forum.

Permission is granted. The writ petition is dismissed as withdrawn with liberty as prayed for.

4. It further appears that after passing of the order dated 14.12.2004 by the trial Court, the plaintiff moved an application on 11.3.2005 (Annex. 3) seeking permission of the Court for taking the said documents on record; and another application was moved by the plaintiff (Annex. 4) seeking permission to produce on record certain more documents viz., the income tax assessments for the years 1985-86, 2003-2004 and 2004-2005; and the said applications were pending at the time when the aforesaid writ petition filed against the order dated 14.12.2004 was withdrawn. The applications so moved by the plaintiff were put to contention by the present petitioners while filing replies (Annex. 5 and Annex. 6).

5. The learned trial Court by impugned its order dated 10.8.2007 (Annex. 7) has considered it proper to allow the applications filed by the plaintiff and has permitted production of such documents with the observation that the rules of procedure are only the medium to reach justice and they cannot be applied in such a fashion that the cause of justice is defeated. The learned trial Court considered the objection of the petitioners that because of the previous order dated 14.12.2004 the documents cannot be taken on record and observed that the said order was passed only because earlier the documents were filed without permission and objection was raised by the defendants that the documents could be taken on

record only with the permission of the Court. The learned trial Court was of opinion that the said order dated 14.12.2004 was not of any prohibition upon the plaintiff from moving appropriate application in that regard. The learned trial Court has, of course, observed that the documents were filed belatedly and the defendants were required to be compensated; and hence, has considered it appropriate to allow costs to the defendants in the sum of Rs. 2,000/-.

6. Seeking to assail the order dated 10.8.2007 (Annex. 7) the defendants-petitioners have preferred this writ petition. It has essentially been contended by the learned Counsel appearing for the petitioners that the impugned order dated 10.8.2007 amounts to review of the order dated 14.12.2004 (Annex. 1) that has already become final and even the writ petition filed against the same had been withdrawn. According to the learned counsel, in view of the previous order dated 14.12.2004 and withdrawal of the writ petition filed against the same on 19.12.2006, the application so moved by the plaintiffs for permission to produce the very same documents on record was totally incompetent and ought to have been rejected. Learned Counsel further contended that the plaintiff has not been fair in his conduct and at the time the said writ petition was withdrawn, the present applications were already on record before the trial Court. According to the learned counsel, such applications could not have been granted because during their pendency the writ petition was withdrawn by the plaintiff.

7. The hyper-technical submissions as sought to be made on behalf of the petitioners remain not only bereft of substance but are clearly indicative of their intention to somehow put the rules of procedure to a negative use, and to elongate the proceedings; and so also of suggesting the propositions as if the learned trial Court dealing with the civil suit has no jurisdiction to pass an order of the present nature of taking documents on record if they have been filed late and merely because the plaintiff earlier did not seek permission to produce the same. This Court is clearly of opinion that not only this baseless petition deserves to be rejected but further, the costs as imposed by the trial Court on the plaintiff deserve not to be allowed to the defendants for their conduct of taking up frivolous litigation like the present writ petition.

8. The previous order dated 14.12.2004 (Annex. 1) was nothing but an order passed on the objection raised by the defendants against taking of the documents on record without permission of the Court particularly when the documents had not been filed with the plaint and reference was made to the provisions of Order 7 Rule 14 and Order 13 Rule 1 CPC; and the trial Court found that the plaintiff did not seek any permission from the Court for production of such documents nor moved a formal application in that regard. The plaintiff, of course, attempted to challenge the said order in writ petition but then, moved the application on 11.3.2005 for taking the documents on record particularly with the submissions that the documents were required to be filed looking to the submissions as made by the defendants in the written statement and also pointed out that the issues were yet to be framed. The plaintiff filed further documents with another application that too was moved on 11.3.2005 with the same submission that the documents were required to be produced to meet with the plea taken by the defendants.

9. The learned trial Court has dealt with the applications so moved by the plaintiffs in accordance with law and found totally groundless the objection of the defendants regarding operation and effect of the earlier order dated 14.12.2004. The learned trial Court has said,-

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10. The observations aforesaid, particularly on the approach of the learned trial Court towards rules of procedure, remain perfectly justified. In this case, where the issues were yet to be framed and the documents in question were not found irrelevant, the learned trial Court has been justified in taking the same on record. Moreover, there is no such failure of justice manifest in the matter wherefor any interference under Article 227 of the Constitution be considered requisite. Withdrawal of the writ petition by the plaintiff as preferred against the order dated 14.12.2004 has no adverse effect on competence of the applications moved on 11.3.2005. The present writ petition is required to be rejected.

11. Ordinarily, as a result of the aforesaid, this Court would have simply rejected the writ petition but for it being wholly frivolous a matter, this Court is constrained to further deal with the conduct of the petitioners. It is noticed that by the order impugned, the learned trial. Court has also allowed costs to the petitioners in the sum of Rs. 2,000/-; and, ordinarily, with the defendants-petitioners having been reasonably compensated for delay, this Court would not have considered any interference in such part of the order made in their favour but, by taking up the matter in this writ petition, the petitioners have shown their intention to use the rules of procedure for the purpose of causing delay in the proceedings; and the suggestions as made on behalf of the petitioners are to the effect as if a litigation would be preferred to be approached with technicalities and as if the Court cannot have preference to decide the matters on merits and for that purpose cannot allow opportunity to a party to place the relevant material on record in exercise of its Jurisdiction in the interest of justice. For their such conduct and approach, the petitioners defendants have amply demonstrated that the trial Court ought not to have awarded any costs to them.

12. In the overall circumstances of the case, this Court is satisfied that the order as made by the learned trial Court imposing costs on the plaintiff in the sum of Rs. 2,000/- of course deserves to be maintained for the delay caused in the matter but such amount of costs ought to go in legal aid rather than the defendants and the order of the trial Court to that extent deserves to be modified. On being put to such proposition, learned Counsel for the petitioner submitted that the petitioners have filed this writ petition particularly for the earlier order dated 14.12.2004 having been made against the plaintiff and the documents having admittedly not been filed with the plaint. The submissions are not convincing.

13. It is to be imbibed that rules of procedure are intended to subserve the cause of justice and any order made during the course of litigation pertaining to procedure that facilitates decision of real matter in issue on merits, and of extending opportunity to a party to place his case before the Court, if not prohibited by law, ordinarily does not call for interference.

14. After amendment to the Code of Civil Procedure by the Amendment Act of 1999 and alteration of the provisions of Section 115 CPC, the writ jurisdiction of this Court particularly under Article 227 of the Constitution of India is, sparingly, considered for application in the cases where the order impugned would result in manifest failure of justice or of the situation like nature but and however, such jurisdiction is not meant to provide an opportunity to any litigant to suggest a proposition that is in opposition to the requirements of the decision of a lis by the Courts on merits after affording fullest opportunity of hearing to the parties; or to somehow create spokes in progress of the litigation. In the overall circumstances of the case, this Court is satisfied that the petitioners do not deserve to be allowed the amount of costs of Rs. 2,000/- as imposed by the learned trial Court; and such amount of costs should go in legal aid.

15. As a result of the aforesaid, while this writ petition does not merit admission and stands rejected; the order passed by the learned trial Court on 10.8.2007 to the extent it is in favour of the petitioners allowing them the amount of costs of Rs. 2,000/- is modified and such amount of costs shall be deposited with the concerned District Legal Services Authority. If the amount of costs has being paid

by the plaintiff and received by the petitioners, they shall deposit the same with the concerned District Legal Services Authority; and else, it shall be required of the plaintiff to deposit the same with the District Legal Services Authority.

16. A copy of this order be sent to the trial Court.

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