

Smt. Maha Devi Vs. Ravi Kumar and ors.

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Court : Rajasthan

Decided On : Dec-01-1997

Reported in : AIR1998Raj274; 1998(2)WLC39

Judge : Shiv Kumar Sharma, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 37, Rule 3(7)

Appeal No. : Civil Revn. No. 428 of 1997

Appellant : Smt. Maha Devi

Respondent : Ravi Kumar and ors.

Advocate for Def. : Resham Bhargava, Adv.

Advocate for Pet/Ap. : Arjun Karnani, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Shiv Kumar Sharma, J.

1. Legislature intended that summary suits should be disposed of expeditiously. Clause 87, (Sub-clause (1) of S.O.R. (Gaz. of India 8-4-74, Part II, Section 2, Ext. p. 334) reads as under:

'Clause 87 -- Sub-Clause (i) :-- Order 37 provides for a summary procedure in respect of certain suits. The essence of the summary suit is that the defendant is not, as in an ordinary suit, entitled as of right to defend the suit, he must apply for leave to defend within ten days from the date of the service of the summons upon him and such leave will be granted only if the affidavit filed by the defendant discloses such facts as will make it incumbent upon the plaintiff to prove consideration or such other facts as the Court may deem sufficient for granting leave to the defendant to appear and defend the suit. If no leave to defend is granted, the plaintiff is entitled to a decree. The object underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no defence. The order, however, confined to suits of negotiable instruments and is confined to superior Courts. Rule 1 is being substituted to provide for extending the summary procedure to the trial of specified classes of suits by all Courts.'

2. This Court (Hon'ble D.L. Mehta as he then was) had occasion to consider the object of Order 37, CPC in *Aradhana Textiles Pvt. Ltd. v. Vishnu Textile Traders*, AIR 1990 Rajasthan 98. In paras 12 and 13 of the said judgment, this Court indicated thus;

'12. Order 37 has been inserted in its present form vide Amending Act of 1976. The object of the law and particularly Order 37 is that the cases should be decided summarily as far as practicable and, at the same time, the Court should be vigilant to see that justice is done. Rule 1 of Order 37 provides that the operation of the summary procedure may be restricted by the High Court only to such categories of suits as it deems proper and may further restrict, enlarge or vary the categories of the suits to be brought under the operation of the order.

13. I do not know whether the proviso has been discussed by the High Court in its meeting any time. I think that this matter has not been discussed by the Rajasthan High Court. Suits of higher valuation like the present suit may require a detailed determination. Sometimes, even a suit for petty nature needs judicial scrutiny in a cautious way particularly when the cases are against the persons of caste and tribes of the weaker sections of the Society. The object of this order is the summary trial for the early disposal, but, at the same time, to see that the justice,

is done and it should appear that the justice is done keeping this in mind number of factors including the nature of the suit. Broad generalisation of the law may lead to injustice if not applied looking to the specificities of a particular nature of the suit or the parties. For this reason, I am of the view that the condonation of delay should be considered looking to the specificities of the suit and not only the basis of the broad principles laid down which may in some cases, go against the equity and justice.'

3. In view of the above observations, I proceed to decide the instant revision which impugns the order dated Feb. 5, 1997 of the learned Civil Judge (Junior Division), East Ajmer dismissing the application of the defendant-petitioner (for short the defendant) filed under Order 37, Rule 3 (7) of the CPC.

4. The plaintiff non-petitioner (for short the plaintiff) instituted a suit for recovery of Rs. 12.000/- (twelve thousand) against the defendant in the trial Court under the provisions contained in Order 37, CPC. Summons for judgment was issued on October 3, 1994. Summons was served and on July 13, 1995 counsel Shri N. K. Doshi filed his vakalatnama and sought time to file reply. An application under Order 37, Rule 3 (7), CPC along with written statement was filed by the defendant on Feb. 23, 1996. Plaintiffs raised objections and asserted that written statement could not have been taken on record. Learned trial Court vide its order dated Feb. 5, 1997 dismissed the application. Hence this revision.

5. Rule 3(5) of Order 37, CPC provides that at any time within 10 days from the service of summons for judgment the defendant may by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend apply for leave to defend the suit and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court to be just. Under Rule 3 (7) of Order 37 the Court, if sufficient cause is shown by the defendant in filing the application for leave to defend the suit may excuse the delay in applying for leave to defend the suit.

6. In the case on hand no application seeking leave to defend the suit was even filed by the defendant but contrary to the provisions of law written statement was filed as of right along with application under Order 37. Rule 3 (7), CPC seeking

condonation of delay filing the written statement. Rule 3 (5) of Order 37 requires two things : (1) an application by the defendant for leave to defend, and (2) a disclosure upon affidavit of such facts as require proof of consideration or as are considered by the Court to be sufficient to support the application. A mere application for leave to defend is not enough. Thus in the absence of an application supported by the affidavit under Order 37, Rule 3 (5) if written statement is filed by the defendant, it cannot be taken on record.

7. I am unable to persuade myself to agree with the submissions made by Shri Arjun Karnani learned counsel appearing for the defendant that the procedural irregularities committed by the defendants were bona fide and the same may be condoned. The summary procedure under Order 37 cannot be set at naught or defeated merely because of the irregularities committed by the parties. Ratio of Santosh Kumar v. Bhai Mool Singh, AIR 1958 SC 321, is not applicable in the instant case as no application for leave to defend the suit was filed by the defendant. After scanning the impugned order as well as the order sheets of the proceedings of the trial Court I am convinced that this is not a case of ignorance of the law or procedure. The defendant, it appears intended to prolong the suit instituted in the month of October 1994. Learned counsel for the defendant filed power on July 13, 1995 and without applying for leave to defend the suit, filed written statement along with application under Order 37, Rule 3. Learned trial Court it appears also did not care to peruse the provisions of Order 37 and drawn order sheets mechanically. In my considered view no error of jurisdiction was committed by the learned Court below in passing the impugned order and if the order is allowed to stand it would not occasion failure of justice.

8. In the result, the revision fails and is hereby dismissed: No costs.