

Prithvi Raj Jhingta and anr. Vs. Gopal Singh and anr.

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Court : Himachal Pradesh

Decided On : Sep-07-2006

Reported in : AIR2007HP11,[2007(1)JCR533],2006(2)ShimLC441

Judge : V.K. Gupta, C.J.,; Deepak Gupta and; Surjit Singh, JJ.

Appellant : Prithvi Raj Jhingta and anr.

Respondent : Gopal Singh and anr.

Judgement :

V.K. Gupta, C.J.

1. In this petition filed under Article 227 of the Constitution of India challenging the validity and correctness of the order dated 21st January, 2006 passed by the learned Civil Judge, Junior Division, Court No. 1, Rohru in Civil Suit No. 116/1 of 2003, on 6th July, 2006 a learned Single Bench of this Court passed a detailed order with respect to the question of law arising for consideration in this petition touching upon the interpretation to be placed upon Rule 2 of Order 14 of the Code of Civil Procedure in so far as this Rule deals with the scope and ambit of the jurisdiction to be exercised by a Civil Court for deciding preliminary issues of law, pure and simple and/or the preliminary issues of law as well as of facts, independent of the other, main issues both of law and fact which might arise for adjudication in the suit and upon which the parties go for trial. For ready reference the order dated 6th July, 2006 passed by the learned Single Judge touching upon

the aforesaid aspects and formulating the question of law for consideration by the Full Bench is reproduced hereunder:

During the course of arguments of this petition, Mr. Ajay Kumar, learned Counsel appearing for the petitioner while drawing my attention to the Issues framed in the suit submitted that Issues No. 3, 5 and 7 related to the jurisdiction of the suit as well as its maintainability and despite that the learned Court below rejected the petitioner's application filed under Order 14 Rule 2 of the Code of Civil Procedure.

Whether in a suit where all the Issues, both of law and of fact, have been framed and all the Issues have also been tried together, all parties to the suit having adduced their evidence with respect to all the Issues, is it permissible for a Court to take up Issues of law first and give findings or pronounce judgment on such Issues only if such Issues relate to the jurisdiction of the Court and/or the very maintainability of the suit? Does Sub-rule (1) of Rule 2 of Order 14 of the Code of Civil Procedure or for that matter any other provision of law prohibit the Court from adopting such a course of action?

Since on its plain reading, Sub-rule (1) of Rule 2 of Order 14 is subject to the provisions of Sub-rule (2) of Order 14, in a situation, where the stage contemplated by Sub-rule (2) is over, can the Court adopt the aforesaid course of action in deciding first Issues of law relating to the jurisdiction of the Court and the maintainability of the suit and, if decision on such Issues of law renders the suit non-maintainable or results in a finding about the lack of jurisdiction in the trial Court, is it permissible for the Court not to pronounce judgment or give findings on other Issues?

The aforesaid being important question of law and there not being any pronouncement on the subject by this Court, I deem it proper to refer it for authoritative pronouncement to a Full Bench of three Judges.

List on 17th July, 2006 before a Full Bench at 3.30 p.m.

2. Rule 2 of Order 14 C.P.C. as it presently stands reads as under:

2. Court to pronounce judgment on all issues. - (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

3. The present structure of Rule 2 was brought about by the Civil Procedure Code (Amendment) Act, 1976. Before its amendment by the aforesaid amending Act of 1976, Rule 2 read as under:

Order XIV, Rule 2 - Issues of law and of fact. - Where the issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

4. When one draws a comparison between the earlier Rule 2 and the amended Rule 2, the comparison immediately leads to a conclusion that whereas under the old Rule 2 it was mandatory for a Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after findings had been arrived at with respect to the issues of law, under the new, amended Rule 2, as has been spelt out and clearly stipulated in Sub-rule

(1) thereof, the legislature has mandated that a Court shall pronounce judgment on all issues, both of law as well as facts, notwithstanding that a case may be disposed of only on a preliminary issue. Under the new Rule 2 the only exception is contained in Sub-rule

(2) thereof which, in a manner of speaking relaxes the aforesaid legislative mandate to a limited extent by conferring a discretion upon the Court that if it is of the opinion that the case or any part thereof may be disposed of on a issue of law only, it may try that issue first, in the process postponing the settlement of other issues until the issue of law has been determined. This discretion even though conferred by the aforesaid legislative amendment has however been circumscribed and limited, specifically and explicitly only to two situations and these are that the issue or issues of law only upon which the case or any part of the case may be disposed of must relate to either the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. By a combined reading of Sub-rule

(1) and Sub-rule

(2) of Rule 2 what therefore emerges is that, except in situations covered by Sub-rule

(2) a Court must dispose of a suit as a whole, try all issues of law and fact together and accordingly pronounce judgment on all such issues even though the case may be disposed of on a preliminary issue. More importantly, and for the purposes of our case, in the light of the specific reference on the formulated question of law, Rule 2 as it presently stands caters to and creates two sets of situations in a suit. One situation is where, at the stage of framing of issues the Court exercises its discretion conferred upon it under Sub-rule

(2) and frames, in the first instance issues of law only and passes an order specifically and explicitly proposing to try issues of law only, in the process postponing the settlement of other issues until after it has decided the issue of law only. In this situation, at the stage of determining or deciding the issues of law only the Court may either dispose of the suit based on such determination of the issues of law only, of course these issues of law relating to the jurisdiction of the Court or a bar to the maintenance of the suit created by law for the time being in force, or upon determination of issues of law only the Court may hold that the suit is maintainable and/or that it has jurisdiction also to try the suit and thus, consequently to proceed to settle other issues for trial and determination. Such a

situation is contemplated by Sub-rule

(2) and there is no manner of doubt that in taking recourse to such a situation the Court has the mandate as well as the sanction from the legislature.

5. The second, other situation which may arise is that the Court does not exercise its discretion, for any reason whatsoever, valid or otherwise, and at the stage of framing of the issues frames all the issues, of law as well as fact and proceeds to decide all such issues together. This course of action is contemplated by an explicit mandate of the legislature in Sub-rule (1). The question which has fallen for our consideration in this reference is that if a suit falls under the second situation where the Court has not exercised its discretion under Sub-rule (2) and it has not only framed all the issues, of law as well as fact and has also tried all such issues together, is it open to the Court, after the conclusion of the trial on all the issues to take up issues of law only and by adopting this principle of severability to proceed to dispose of the suit on the issues of law only, without at the same time according its consideration to other issues.

6. While examining the repercussions of the unamended Rule 2 and the ramifications arising therefrom, the Law Commission of India had opined as under:

This rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the Courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a Court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force.

7. The Statement of Objects and Reasons accompanying the amending Act of 1976 whereby Rule 2 was amended read thus:

Clause 67 - Sub-clause (ii). - Rule 2 is being substituted to provide that although a suit can be disposed of on a preliminary issue, the Court shall ordinarily pronounce

judgment on all issues; but where any issue relating to the jurisdiction of the Court or a bar created by any law for the time being in force, the Court may postpone settlement of the other issues until the preliminary issue with regard to the jurisdiction of the Court or such bar has been determined and the Court may deal with the suit in accordance with the determination of such preliminary issue.

8. The legislative mandate is very clear and unambiguous. In the light of the past experience that the old Rule 2 whereby, in the fact situation of the trial Court deciding only preliminary issues and neither trying nor deciding other issues, whenever an appeal against the judgment was filed before the Appeal Court and the Appeal Court on finding that the decision of the trial Court on preliminary issues deserved to be reversed, the case per force had to be remanded to the trial Court for trial on other issues. This resulted in delay in the disposal of the cases. To eliminate this delay and to ensure the expeditious disposal of the suits, both at the stage of the trial as well as at the appeal stage, the legislature decided to provide for a mechanism whereby, subject to the exception created under Sub-rule (2), all issues, both of law and fact were required to be decided together and the suit had to be disposed of as a whole, of course based upon the findings of the trial Court on all the issues, both of law and fact.

9. Based upon the aforesaid reasons therefore, and in the light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under Sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under Sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a Court because Sub-rule (1) does not permit the Court to adopt any such principle of severability and to dispose of a suit only on preliminary issues, or what can be termed as issues of law. Sub-rule (1) clearly mandates that in a situation contemplated under it, where all the issues have been framed together and have

also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the Court covering all the issues framed in the suit.

10. The reference is answered accordingly. The matter shall now be listed before the learned Single Judge for deciding the petition in the light of answer to the reference.

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