

(1972) 01 OHC CK 0018

In the Orissa High Court

Case No : Civil Revision No. 377 of 1970

Abdul Sakoor Umar Sahigara

APPELLANT

Vs

Harachand Dey

RESPONDENT

Date of Decision : 04-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1972 Ori 263

Hon'ble Judges : A. Misra, J

Bench : Single Bench

Advocate : A.K. Rao, M.K.C. Rao and G. Lakshamma, for the Appellant; U.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

A. Misra, J.—The plaintiff is the petitioner.

2. The facts giving rise to this revision are as follows:--

The plaintiff filed a suit for recovery of Rs. 60,000/- odd on the basis of a security bond alleged to have been executed by the defendant on 7-8-1963 for Rupees 97,000/- odd on settlement of accounts between the parties. The defence in short, is that the plaintiff had supplied articles worth only Rs. 60,000/- odd, but in collusion with the defendant's agent manipulated the latter's accounts to show supply of articles worth Rs. 97,000/- odd. Before filing of the written statement, the defendant filed a petition for directing the plaintiff to produce his bills which was rejected. The written statement was filed in April, 1967. Thereafter, the defendant filed another petition on 9-1-1968 before the trial Court for directing the plaintiff to produce his accounts relating to past transactions between the parties. On objection by the plaintiff, the said petition was rejected. On 29-1-1968. The defendant preferred C. R. No. 61 of 1968 against the said order of rejection, but the same was withdrawn on 20-6-1964. On 4-3-1968, the defendant filed another petition for directing the plaintiff to

produce his accounts for the period from 1-1-1961 to 7-8-1963. This was dismissed for default on 28-3-1968. On 29-3-1968, the defendant filed another petition for restoration of the same and ultimately it was restored and by order dated 17-8-1968 the petition of the defendant was rejected on merits. Against this order, the defendant preferred C. R. No. 361 of 1968 and the same was dismissed by the High Court on 12-8-1969. Hearing of the suit commenced on 3-9-1970 on which date, the P. Ws. and D. Ws. were examined and the suit was posted to 9-9-1970 and thereafter to 16-9-1970 for arguments. On 16-9-1970 and 17-9-1970, arguments were heard and the suit was reposted to 19-9-1970. On 18-9-1970, the defendant filed a petition for recalling P. W. 1 and directing him to produce his books of accounts for the period from 7-4-1960 to 7-8-1963. On 19-9-1970, the suit was posted to 29-9-1970 for judgment and for orders on the petition dated 18-9-1970- After two or three adjournments, ultimately the learned Additional Subordinate Judge passed an order directing the plaintiff to produce his books of accounts for three years from 7-4-1960 to 7-8-1963 relating to his business transactions with the defendant. It is this order which is under challenge in this revision.

3. The main contention of learned Counsel for petitioner is that when successive petitions by the defendant for directing the plaintiff to produce his books of accounts had been rejected and the orders of rejection also confirmed by the High Court in revision, the trial Court committed a gross error in allowing a fresh petition on the same grounds with the same prayers without paying any regard to the finality of orders passed on the previous petitions. On the other hand, it is contended on behalf of opposite party that orders on this petition being interlocutory in nature, the previous orders will not operate as *res judicata*, and therefore, the trial Court had jurisdiction to pass the impugned order if it felt that in the interests of justice the plaintiff should be directed to produce his accounts.

4. It is, no doubt, true that the bar of *res judicata* u/s 11, Civil P. C. may not be applicable to all types of interlocutory orders. At the same time, it cannot be disputed that matters which have attained finality by orders at some stage of the suit of proceeding cannot be reagitated at subsequent stage on the same grounds. In the decision reported in *Arjun Singh Vs. Mohindra Kumar and Others*, , it is observed :

"It is needless to point out that interlocutory orders are of various kinds: some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of *res judicata* does not apply to the findings on which

these orders are based though if applications were made for relief on the same basis after the same has once been disposed of the Court would be justified in rejecting the same as an abuse of the process of Court".

A similar question came up for consideration before the Nagpur High Court in the decision reported in AIR 1951 Nag 212, (*Miss Rajul Raoji v. Provl. Govt., C. P. & Berar*). That was a case where plaintiff filed an application for directing the defendant to produce certain documents and the latter claimed privilege against their production. The claim of privilege was upheld and the application was rejected. That order remained unchallenged. A subsequent application for the same purpose was filed and was rejected. Against this latter order, a revision was filed. It was held that it was not open to the plaintiff to re-agitate the matter which had been concluded by the previous order.

5. In the present case, admittedly, successive applications with the same prayer on the same grounds had been made in the past and rejected, and at least on two occasions revisions had been carried to the High Court with no better result. No new ground has been alleged in the present petition nor has it been pointed out that such a prayer is sustainable on grounds that have subsequently emerged. When the orders passed on the previous occasions for the same relief had become final and conclusive, allowing the subsequent petition and granting the same relief which had been previously rejected amounts to abuse of the process of Court, Therefore, the order of the learned Additional Subordinate Judge is clearly erroneous and cannot be sustained.

6. In the result, I allow the revision with costs and set aside the impugned order. After close of the evidence of both parties, the suit still remains undisposed of since a long time. The trial Court should dispose of the suit at a very early date.