
(2000) 03 MP CK 0010
In the Madhya Pradesh High Court
Case No : S.A. No. 75 of 2000

Abhay Kumar Natthu Lal Jain

APPELLANT

Vs

Santosh Kumar Madanlal Naik and others

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(b),
12(1)(e)

Citation : (2000) 3 MPLJ 130

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : Ravish Agarwal, for the Appellant; N.K. Patel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This is an appeal u/s 100 of the CPC against the judgment and decree dated 24-12-1999, passed by IXth Additional District Judge, Jabalpur, in Civil Appeal No. 9-A/1997 arising out of the judgment and decree dated 22-9-1992, passed by Vth Civil Judge Class-I, Jabalpur in Civil Suit No. 1-A/1992.

It is not necessary to give the facts in detail. The respondents Nos. 1 and 2 filed a suit for eviction against the appellant and the respondent No. 4 u/s 12(1)(b) as well as section 12(1)(e) of Madhya Pradesh Accommodation Control Act, 1961 (hence forth "the Act"). The suit was resisted by the appellant denying that the respondents Nos. 1 and 2 required the suit-house bona fide for their residence and also, asserting that there was no sub-letting or parting with possession of the suit-accommodation within the meaning of section 12(1)(b) of the Act, in favour of the respondent No. 4.

The trial Court found that the respondents Nos. 1 and 2 have failed to establish the ground for eviction u/s 12(1)(e) of the Act. It further negated the plea of

the respondents Nos. 1 and 2 regarding the sub-letting and ultimately, dismissed the suit.

It appears that the respondents Nos. 1 and 2 had sold the suit-house to Rakesh Kumar Jain on 28-3-1992. It was Rakesh Kumar Jain, the respondent No. 3, who filed the appeal u/s 96 of the Code of Civil Procedure. It is apparent that he was not a party to the suit earlier. It was he who filed an application under Order 41, Rule 27 of the CPC on 8-12-1999 before the Court below. This application too was opposed by the appellant.

The Lower Appellate Court by order (in order sheet) dated 15-12-1999 decided to hear the application under Order 41, Rule 27 of the CPC at the time of hearing the arguments on merits in appeal. Thereafter, on 21-12-1999 the arguments were heard by the Court below on merits of the appeal as well as on the application under Order 41, Rule 27 of the Code of Civil Procedure. The case was then fixed for judgment on 24-12-1999. On that date the judgment was delivered by orally dictating it in the open Court and for the reasons given in the judgment the Lower Appellate Court accepted the application filed by the respondent No. 3 under Order 41, Rule 27 of the CPC and also allowed the appeal by the same judgment dated 24-12-1999 which is impugned in this appeal.

This Court had admitted the appeal on 6-3-2000 on the following substantial questions of law:-

(1) Whether the Court-below should have given an opportunity to the appellant after admitting the evidence led by the respondent No. 2 under Order 41, Rule 27 of the Code of Civil Procedure?

(2) Whether the finding arrived by the Lower Appellate Court that the sub-letting or parting with possession in favour of the respondent No. 4 was in respect of the house, is based on misreading of the evidence on record?

The learned counsel for the appellant had argued that no opportunity was given to the appellant to rebut the evidence filed under Order 41, Rule 27 of the CPC by the respondent No. 3 before the Court-below. In this connection, he relied upon the decisions in *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, ; *Suresh Chandra Das Vs. Maheswar Das and Others*, ; and in *Hazarilal Vs. Nagar Parishad*, .

The learned counsel for the respondent No. 3, however, argued that the documents filed by the respondent No. 3 were public documents and, therefore, there was no question of rebutting them. Further it was argued that such opportunity was never sought by the appellant during the course of argument and for this reason, this Court should not interfere with the impugned judgment and decree.

Rule 27 of Order 41 of the CPC is an enabling provision permitting any of the parties to the appeal to produce additional evidence whether oral or

documentary at appellate stage; provided the conditions mentioned in the rule are satisfied. Clause (a) permits the Appellate Court to admit evidence which the Trial Court refused to admit for wrong reasons. Clause (aa) enables the parties to adduce additional evidence when the evidence could not be produced despite the exercise of due diligence because of lack of knowledge or for some other like reason preventing the party from producing the additional evidence. The clause (b) of Order 41, Rule 27 of the CPC does not deal with the rights of the parties but confers on the Appellate Court discretionary power to admit any document or examine any witness, if the Court requires the same to enable it to pronounce judgment or for any other substantial cause. It is obvious in clause (b) aforesaid that there is requirement of the Court despite the fact the parties did not produce the evidence which was necessary for giving a judgment in accordance with law. The discretion given to the Appellate Court cannot be exercised unless the Court hears the parties on merits of the case and when it hears the case on merits, it may come to the conclusion that a particular document or oral evidence is necessary for just decision in the case. In such circumstances, the Lower Appellate Court is authorised to exercise the powers under clause (b) to Rule 27 of Order 41 of the Code of Civil Procedure. The Court is also empowered to admit alternatively further evidence if there is any other substantial cause. It is also well established that while admitting the additional evidence, the Court is required to record its reasons in writing for admitting such additional evidence. In the case of *Arjan Singh v. Kartar Singh*, (1951) 2 SCR 258 the Supreme Court had pointed out that in case, the Lower Appellate Court is able to pronounce a judgment without additional evidence then it may not admit it as it is not required by the Court. Similarly, in the case of *K. Venkataramiah Vs. A. Seetharama Reddy and Others*, , it was pointed out that the words "any other substantial cause" in the Rule aforesaid meant that the Court required additional evidence in the interest of justice, i.e. something which remains obscure so that the Court could proceed to decide the appeal and pronounce the judgment in more suitable manner. When an application is filed under Order 41, Rule 27 of the Code of Civil Procedure, apart from clause (a) or clause (aa) of Rule 27 aforesaid, clause (b) of Order 41 also becomes operative. Therefore, it has been held by this Court in number of decisions that an application under Order 41, Rule 27 of the CPC should be decided at the time after hearing the case on merits (See - *Khemchand Mulchand vs. Government of Madhya Pradesh, Bhopal and others* 1972 MPLJ 524). In this case the decisions in *Arjan Singh's* case (supra) and *K. Venkatramiah's* case (supra) have also been relied upon. However, the decisions rendered by this Court do not mean that the application under Order 41, Rule 27 of the CPC should be decided at the time of passing the final judgment and decree. What is required, is that during the course of final arguments if the Court comes to the conclusion that it should exercise its power under Order 41, Rule 27 of the Code of Civil Procedure, then it is incumbent upon the Appellate Court to stay the delivery of judgment and record the reasons of admitting the application under Order 41, Rule 27 of the Code of Civil Procedure. After admitting the additional evidence the question of deciding the case on

merits shall arise. It may, prima facie, appear that this amounts to duplication of work but in order to determine the question under Order 41, Rule 27 of the Code of Civil Procedure, under clause (b) thereof, such an exercise is necessary. Therefore, the Lower Appellate Court had made an error when it admitted the application under Order 41, Rule 27 of the CPC and pronounced the judgment simultaneously, without giving opportunity to the appellant to rebut the evidence led by the respondent No. 3.

It is true that there is no specific rule in Order 41, permitting a party to rebut the evidence admitted under Rule 27 of Order 41 of the Code of Civil Procedure. However, it is obvious that this opportunity should be given to the opposite party to rebut the evidence led at the appellate stage, whether it be oral or documentary. Otherwise, the party whose application is allowed at appellate stage, will be at a great advantage. In this connection it is necessary to record the observations of the Supreme Court, though in different context, in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, , at page 429, paragraphs 16 and 17 as follows:-

(16) Now a code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of section that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to "both sides") lest the very means designed for the furtherance of justice be used to frustrate it.

(17) Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be preclude from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

It is apparent from the aforesaid quotations that the interpretation given above to Rule 27 of Order 41 of the CPC is in accordance with the principles of "Natural Justice". Otherwise it would appear that the aforesaid rule was designed to trip the opposite party up. Thus, this Court comes to the conclusion that despite the absence of any specific rule in Order 41, it is requirement of principles of "Natural Justice" that a party against whom an additional evidence is admitted, should have an opportunity to rebut it. The aforesaid conclusion of this Court is supported by the direct decision of the Supreme Court in *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, . In this case, it was held by the Supreme Court at page 2414, paragraph 28 as follows:-

28.We are of the opinion that the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it an opportunity should have been given to the appellant, to rebut any inference arising from its existence by leading other evidence.

Similar views were taken also in the case of Arjan Singh (supra), K. Venkataramiah (supra) and Khemchand Mulchand (supra).

For all the aforesaid reasons this appeal stands partly allowed. The impugned judgment and decree of the Lower Appellate Court are hereby set aside and the case is remanded back to the Court-below without setting aside the finding of the Lower Appellate Court that the document filed by the respondent No. 3 are liable to be admitted in evidence., The Lower Appellate Court, however, shall give an opportunity to the appellant to rebut the evidence led by the respondent No. 3, if he so chooses. In case, the appellant wants to lead any evidence in rebuttal then he should be permitted to do so. It is made clear that this opportunity shall be confined to leading evidence only in rebuttal and no opportunity of leading such evidence would be deemed to be given to the appellant by this order of remand.

Accordingly, the case is remanded back to the Lower Appellate Court, in exercise of powers under Order 41, Rule 23-A of the Code of Civil Procedure, with a direction to proceed further in accordance with law. The parties are directed to appear before the Lower Appellate Court on 28th of March, 2000 for taking further dates for their appearance before that Court. No costs.

Order accordingly.