

(2008) 04 CAL CK 0003
In the Calcutta High Court
Case No : C.O. No. 3052 of 2004

Ashma Khatoon and Another

APPELLANT

Vs

Subroto Ghatak and Others

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2008) 04 CAL CK 0003

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharya, H.C. Yadav and Chandraday Roy, for the Appellant; Rabindranath Mahato and Debases Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Somadder, J.—Heard the learned Advocates appearing on behalf of the parties.

2. this is an application under Article 227 of the Constitution of India primarily directed against an order being order No. 26 dated 31st July. 2004 passed by the learned Additional District Judge (Special Court) Jalpaiguri in Original Case Appeal No. 7012002. By the order impugned, the petition of the defendants, being the appellants in the Court below, u/s 151 of the CPC for amendment of challan by which the appellants deposited rent to the Court below, stood rejected.

3. The learned Advocate who appeared for the appellants in the Court below submitted that the mistakes in the challans cropped up due to the negligence of the Advocate's clerk and such mistakes were bona fide and formal in nature. This submission was opposed by the learned Advocate for the respondents in the Court below who submitted that if the challans were allowed to be admitted in terms of the prayer of the learned Advocate for the defendants/appellants. it would change the nature and character of the appeal and would also cause prejudice to the respondents/plaintiffs who had acquired right by the judgment

of the learned trial Court. The learned Court below, after considering these submissions, was, inter alia, pleased to reject the amendment petition dated 27th May, 2004 with the following reasons:

...It appears on perusal of the judgment of the learned Court below that the mistakes in challans were a point of adjudication before the learned Civil Judge, Junior Division and she after considering all the materials on record decreed the suit by observing that the deposits of rent were not valid.

In the aforesaid facts and circumstances, at the appellate stage no such amendment can be allowed which either modifies or alters the judgment of learned Court below because such amendments cannot be said as formal in nature and the appellate Court cannot view it as bona fide mistake of the Advocate's clerk. Accordingly, I find no merit in the amendment petition and hence it cannot be allowed.

4. By an earlier order of this Court dated 19th July, 2005, the lower Court record had been called for, which are now before me.

5. It appears from the lower Court records that the challans in question are actually High Court Forms, being High Court Form No. (A) 1 (Civil) / (A) 1 (Original) and have two parts; Part-1 is required to be filled in at Court by the payee and Part-II is required to be filled in by the Court or under its orders.

6. The following particulars are required to be provided under Part: I, Bengal Form No. 3550:-

PART-I.-

To be filled in at Court by the Payee.

Name of person or Remarks persons on whose behalf the money is tendered

Name of person or persons to whose credit the amount is to be placed in the Court's book.

Number of suit or date of decree or order (if any) under which the amount is tendered

Particular of receipt

Amount tendered

(if any)

1

2

3

4

5

Rs.

P.

6

Signature of Chief Ministerial Officer

Signature of person tendering the money

To

The Cashier of the Court,

Receive and credit the above sum if tendered to you before the closing of the Court today.

Signature of the Presiding Judge/Magistrate.

Part-II of the Challan contains the following particulars:

PART-II

To be filled in by the Court or under its orders

Number and date in the register of challans

Number and date of the item in the register of deposit receipts

Account to be credited whether civil suit deposits, fines or forfeitures, stamp duty and penalties or miscellaneous or other receipts

Remarks

1

2

3

4

To

The Officer-in-Charge of the Treasury at,

Receive and credit the above sum if tendered to you before 2-30 p.m. today/tomorrow:

Dated

Signature of Judge/Magistrate-in-Charge.

7. In the facts of the instant case it appears that in some of the challans the name of the plaintiff No. 4 (Kanika Ghatak) was written under column 2 of Part-I

referred above. Since there were other legal heirs of the landlord, it was contended on behalf of the plaintiffs that these deposits were not validly made by the defendants as the names of some of the plaintiffs were sought to be excluded in the challans deposited on behalf of the defendants. It was further contended that the defendants never applied for correction of the treasury challans before the learned first Court u/s 151 of the Code of Civil Procedure. Taking note of the respective contentions 0.1 the parties the learned Court below was pleased to disallow the amendment application of the appellants, being the defendants before the learned first Court.

8. This view of the learned Court below, in my opinion, is not the correct view, since Part-I of the challan clearly indicates not one but six columns. What is of more importance is that under column 3 of Part-I, the number of suit or date of decree or order (if any) under which the amount is to be tendered, is required to be mentioned, which, in the facts of the instant case has been mentioned clearly in all these challans and which fact has not been disputed at all by the plaintiffs. A treasury challan or any challan, whereby certain amounts are tendered to the government or the Court, requires a particular head of account and/or a sub-head to, be indicated, whereunder such amounts are required to be deposited. This is clear from column 3 of Part-II of the same challan, which indicates the account to be credited, whether civil suit deposits, fines or forfeitures, stamp duty and penalties or miscellaneous or other receipts. The name of the person or persons under column 2 of Part-I to whose credit the amount is to be placed in the Court's book has to be read along with the description of the suit number or the date of the decree or order (if any) under which the amount is tendered, which is required to be filled in under column 3 of Part-I. What is of paramount importance and is required to be noticed is whether Original Case No. 247 of 1997 in the Court of Civil Judge (Junior Division), Jalpaiguri has all the legal heirs of the landlord recorded, or just the name of the plaintiff No. 4 (Kanika Ghatak). The names of the other plaintiffs not appearing under column 2 of Part-I of the challan/challans in question is of little or no consequence, since all amounts deposited as per challan/challans remains credited under Original Case No. 247 of 1997, in the Court of Civil Judge (Junior Division), Jalpaiguri, and not in the name of any individual (emphasis supplied). The essence of the particulars that are required to be filled up in such type of forms/challans is to provide for adequate particulars to facilitate deposits made through a Court which are to be well accounted for in the Treasury, so that any sort of error or discrepancy of crediting such amounts under its actual head stands eliminated.

9. In view of the foregoing discussion, in my opinion, there was no requirement even for correction of the inadvertent mistakes made in respect of the challans in question and the learned Court below shall deem those deposits of the appellants to be valid deposits made in accordance with law, for which no amendment is necessary.

10. In view of the observations made herein, the impugned order dated 31st

July, 2007 is set aside and the learned Court below is directed to proceed and dispose of the Original Case Appeal No. 7 of 2002 as expeditiously as possible preferably within a period of six months, but not later than eight months from the date of receipt of this order, without granting unnecessary adjournments to any of the parties even on consent.

11. Let the L.C.A. be returned to the learned Court below by Special Messenger at the cost of the petitioners.

12. With the above directions, the revisional application stands allowed.