

(1982) 05 AHC CK 0012

In the Allahabad High Court

Case No : Civil Misc. Application No. 5280 (W) of 1982 in Writ Petition No. 5450 of 1981

Babu Khan

APPELLANT

Vs

Smt. Annapurna Devi and Others

RESPONDENT

Date of Decision : 28-05-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, 2(2), 35, 35(2)

Citation : AIR 1983 All 460 : (1982) AWC 569

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

Bench : Single Bench

Advocate : B. Soloman, for the Appellant; J. Bhalla and B.C. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mathur, J.—The applicant had preferred writ petition in this Court against the decree for ejectment passed against him by the court below. While rejecting the writ petition through my judgment dated 22-1-82 I had allowed six months time to the applicant to vacate the accommodation in dispute. This time of six months was available to the applicant on the condition that he deposited the entire decretal amount/mesne profits upto 31st January, 1982 in the trial court within fifteen days and continued to deposit in the trial court future mesne profits within 7 days of their falling due. According to the averments made in the affidavit filed in support of this application the applicant deposited on 9th February, 1982, a sum of Rs. 550/- as rent upto May, 1982. The applicant, however, did not deposit the costs of the proceedings. The decree holder pressed that the terms of my order dated 22nd January, 1982 had not been complied with and, therefore, time allowed to the Petitioner could not be availed of by him. This plea was accepted by the court below. Before the court below the applicant's case was that there was no direction in my judgment dated 22nd January, 1982 regarding deposit of the costs and therefore the applicant could

not be said to have committed default in the observance of the terms of the said judgment. Before me also it was argued by Sri B. Soloman, learned Counsel for the the applicant that my order did not contemplate the deposit of the amount of costs. The argument of learned Counsel was that the term "decretal amount" used in my judgment did not include costs. In support of his argument the learned Counsel referred to the definition of the term "decree" and to the provisions of Order 21, Rule 11 read with Appendix E Form of the Code of Civil Procedure. According to him these provisions also indicate that the term "decretal amount" does not include costs of the suit.

2. The term "decree" has been defined in Section 2(2) of the CPC as follows:

(2) "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final.

The award of costs is dealt with u/s 35 of the Code of Civil Procedure. This section provides that the award of costs shall be in the discretion of the court and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid. Sub-section (2) of Section 35 provides that where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing. This provision indicates that the court is required to apply its mind in the matter of award of costs. Order 21 Rule 11 relied upon by the learned Counsel prescribes matter which are required to be mentioned in the application for execution of the decree. In the Appendix to the Code the proforma of the application for execution is prescribed in Form No. 6. Form 6 contains various columns which the decree holder is required to fill in while applying for the execution of the decree. Under column No. 7 the amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree are required to be stated. The amount of costs, if any, awarded is required to be mentioned in column 8. The argument of the learned Counsel is that while column 7 is for stating the decretal amount, column 8 is for stating the amount of costs. The allotment of a separate column in the prescribed proforma for stating the amount of cost, according to the learned Counsel, indicates that costs are distinct from "decretal amount", I am unable to agree with the submission of the learned Counsel,

The question cannot be decided with reference to the proforma but will have to be decided with reference to the definition of the term decree in Section 2(2) of the Code and with reference to Section 35 thereof. Decree, as is apparent from the definition of the term, determines the rights of the parties with regard to matters in controversy. The question of cost was also a matter in controversy between the parties. Through paragraph 13 (v) of the plaint, Annexure 3, the Plaintiff opposite party claimed cost of the suit. Through paragraph 23 of the written statement, Annexure 4, the Defendant-applicant denied Plaintiff's entitlement to any relief, which included costs also. Further through paragraph

19 the applicant claimed costs from the Plaintiff-opposite party. Thus there was a controversy between the parties regarding the award of costs. u/s 35 of the Code while deciding a suit the court is required to apply its mind to the question whether costs are to be awarded to the successful party or not. Under Sub-section (2) it is required to state reasons if it decides to deprive the successful party of costs. Thus determination of a matter in controversy is involved even in the award of costs and therefore the direction regarding costs of the suit is also covered by the term "decree" as defined in Section 2(2). Consequently the term "decretal amount" will include costs of the suit or proceeding also. Since the applicant did not deposit the decretal amount within the time allowed he failed to comply with the conditions on which the period of six months was available to him. The court below was, therefore, justified in rejecting the applicant's plea through its order dated 18-5-1982 that he had complied with the conditions of my judgment dated 22-1-1982.

3. In support of his argument that costs are not included in the decretal amount the learned Counsel placed reliance upon the judgment of Jagat Narayan, J. in Mathuralal and Others Vs. Chiranji Lal and Others, . The question raised in this case was whether the order impugned was a decree against which appeal was maintainable rendering revision incompetent. The revision that came up for decision was directed against an order passed by the trial court through which the Plaintiff's suit was dismissed as withdrawn. In the suit the Plaintiff had claimed decree for dissolution of partnership and rendition of accounts. A preliminary decree had been passed in favour of the Plaintiff. Thereafter for the purpose of passing final decree the matter was referred to arbitration. The Arbitrator could not give his award even though six months had expired and thereupon the Plaintiff moved an application praying for supersession of the reference and withdrawal of the suit. In this application he stated that he did not wish to pay the costs to any of the Defendants. Some of the Defendants made an endorsement on this application that they did not wish to claim any costs. The court allowed the Plaintiff's applications and dismissed the suit as withdrawn directing the parties to bear their own costs. Thereafter some of the Defendants moved an application for review of the order on the ground that they had not consented to the withdrawal of the suit and the order of withdrawal was illegal. The trial court, even after continuing the finding that some of the applicants of this application, who applied for review of the order, were not present at the time the order of dismissal of the suit was passed, rejected the application. The applicants of this application thereafter preferred revision in the High Court of Rajasthan. On behalf of the Respondents, in the revision, a preliminary objection was raised against the maintainability of the revision. It was pressed that while dismissing the suit as not pressed the court considered the question of award of costs and therefore there was adjudication within the meaning of Section 2(2) of the CPC and consequently the order amounted to a decree against which appeal was maintainable. On this ground it was pleaded that the revision was not maintainable. Repelling the argument Jagat Narayan, J. observed in paragraph 9

of the judgement at page 111 as follows:

with the highest respect I am unable to agree that an order with regard to costs can be regarded as an adjudication with regard to a matter in controversy in the suit...

While taking the above view Jagat Narayan, J. did not agree with the view expressed by the Madras High Court in Jujisti Mahapatro Vs. Korada Magata Patro and Others, . In this case the following observation was made by Jackson, J.:

No doubt if the Court had been so disposed it might simply have recorded: "Leave granted to withdraw," and then the Appellant would be in the same position as if he had not appealed at all; but when the Court went further and considered the award and distribution of costs it is difficult to see how it has not expressed an adjudication and therefore passed a decree.

For the reasons given hereinabove I am inclined to agree with the view expressed by the Madras High Court. It may further be observed that in the Rajasthan case the parties, who had appeared before the trial court, had agreed to forego costs. Thus in the Rajasthan's case the trial court was not required to adjudicate upon the question of costs.

4. In view of the above I am of the opinion that the order of the court below does not suffer from any error. The application, in which the only prayer made is that the operation of the order dated 18-5-1982 passed by the court below be stayed, is rejected.

5. The learned Counsel for the Petitioner orally pressed that some time may now be allowed to the applicant to deposit: the costs of the suit. Six months' time had been allowed to the applicant as a matter of grace to which there was no legal entitlement. Such grace can be shown only to the litigant who acts fairly. Even if my order did not contemplate deposit of costs under the decree passed by the court below, the liability to pay costs was there and acting fairly the applicant should have deposited that amount also. The applicant not only did not discharge his legal liability but persisted in having that he was not liable to deposit the amount of cost at all, A litigant who indulges in quibbling with technicalities in the discharge of his legal obligation is not entitled to any indulgence. I, accordingly, reject the oral prayer made by the learned Counsel.