
(2019) 04 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2771 Of 2018

Bajrang Kumar

APPELLANT

Vs

Akhil Bhartiya Marwari Maid Kshatriya Swarnkar Sabha

RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 23, Order 41 Rule 23A, Order 41 Rule 27, Order 41 Rule 27(b)(1)

Citation : (2019) 04 RAJ CK 0017

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : S.P. Goytan, S.S. Ladrecha

Final Decision : Dismissed

Judgement

This appeal is preferred by appellant-defendant to challenge judgment and decree dated 27.04.2018, passed by Additional District Judge No.4, Bikaner (for short, 'learned lower appellate Court'), whereby learned lower appellate Court, while accepting the appeal of respondent-plaintiff against judgment and decree dated 03.03.2015, passed by Additional Senior Civil Judge No.1, Bikaner (for short, 'learned trial Court'), remanded the matter back for its decision afresh.

At the threshold, respondent-plaintiff filed a suit against appellant for perpetual injunction restraining him from discharging the duties as Manager of Akhil Bhartiya Marwari Maid Kshatriya Swarnkar Sabha, Haridwar, precisely on the ground that he was appointed for a fixed term and that term has come to an end. On behalf of appellant, counter claim was filed praying therein injunction against respondent-plaintiff. The learned trial Court, after hearing rival parties and considering the evidence, rejected the suit of respondent-plaintiff but allowed cross objections of the appellant restraining Shri Hukam Chand Kanta to project himself as Vice President of Akhil Bhartiya Marwari Maid Kshatriya Swarnkar Sabha, Haridwar.

Being aggrieved by the same, respondent-plaintiff preferred an appeal before learned lower appellate Court. Along with the appeal, an application under Order 41 Rule 27 CPC was also filed for taking additional evidence on record. In the additional evidence on behalf of respondent, a document dated 17.04.2011 was filed showing the factum of relinquishment as Trustee by the appellant. The learned lower appellate Court, after hearing rival parties, allowed application under Order 41 Rule 27 CPC subject to payment of cost of Rs.2,000/- and taking into account this fact that some additional evidence has been taken on record, remanded the matter back to learned trial Court by resorting to Rule 23 & 23A of Order 41 CPC for deciding the main suit afresh. Learned lower appellate Court also directed learned trial Court to take additional evidence of rival parties, if required before deciding the matter finally, uninfluenced by any observation made in the order passed by it.

I have heard learned counsel for the parties and perused the impugned judgments.

During the course of arguments, it is brought to my notice by learned counsel appearing for the respondent that since remand, regular proceedings are going on before learned trial Court but no effective proceedings could take place as the appellant is not participating, to which learned counsel for the appellant has seriously disputed and it is submitted on his behalf that the instant appeal is preferred by him to challenge the remand order, and he has also not accepted the cost imposed by learned lower appellate Court.

Upon examining the impugned judgment of learned lower appellate Court, it has come to the fore that learned lower appellate Court, in exercise of its discretion, has accepted application under Order 41 Rule 27 CPC for taking additional evidence on record, and for belated presentation of the evidence learned lower appellate Court has also saddled the respondent with cost of Rs.2,000/-. The ambit and scope of Order 41 Rule 27 is both wide as well as narrow depending on the circumstances. True it is that it is the duty of a litigant, who has tendered additional evidence to show that either the learned trial Court has refused to admit the evidence, or despite due diligence such evidence was not within his knowledge, or could not after due diligence be produced by him. These are stringent requirements prescribed by the Legislature. However, Clause (b) of sub-rule 1 of Rule 27 of Order 41 CPC envisages that if the appellate Court feels that production of document or any witness shall enable it to pronounce judgment or for any other substantial cause, then it can very well exercise its discretion under Rule 27 of Order 41 CPC. From tenor of the impugned order, it appears that learned lower appellate Court in the backdrop of lis involved between the parties, which is essentially a dispute of Samaj, has thought it just and appropriate to take the additional evidence on record and consequently it has also decided to remand of the matter. The scope of judicial review against the order of remand is very much limited and more particularly when the remand order is passed by appellate Court after taking additional evidence on record. Moreover, while

remanding the matter, the appellate Court has granted liberty to both the parties to adduce evidence, therefore, in my opinion, it would not be appropriate to interfere in the matter.

Consequently, the appeal fails and same is hereby dismissed. However, before parting, it may be observed that considering the lis involved in the matter, which is of a Samaj, it would be just and appropriate for the learned trial Court to proceed with the trial with promptitude and decide the main suit itself after remand as expeditiously as possible, preferably by the end of this year.