
(1981) 05 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Revision Petition No. 402 of 1980

Bhopal Mining Works and Another

APPELLANT

Vs

Jai Mica Supply Co. and Others

RESPONDENT

Date of Decision : 12-05-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 14

Negotiable Instruments Act, 1881 (NI) — Section 18

Citation : (1981) WLN 238

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This revision by the defendants u/s 115, CPC is directed against the order dated October 9, 1980, passed by the District Judge, Bhilwara in Civil Original Case No. 51 of 1979

2. The plaintiff-non-petitioner instituted a suit for Rs. 66250/- consisting of Rs. 50,000/- as principal and Rs. 16250/- as interest. The suit was instituted under Order XXXVII, Rule 2 CPC. Summons for judgment in form IV-A in Appendix B, were issued on March 20, 1980, which were served on March 26, 1980. The defendants applied to defend the suit unconditionally under Order XXXVII, Rule 3(5), CPC.

3. The defendant-Company was under the Receiver-ship of Bokaro Steel Ltd. from October 8, 1973 to July 26, 1978. A compromise was entered into between the parties on May 4, 1976. In pursuance of that, payment of Rs. 10,000/- was made by the Receiver and the plaintiff, vide the Receiver's letter dated July 12, 1976, was informed that the balance of instalments would be paid by the Receiver. It was averred that in April, 1979, the plaintiff showed his willingness to re-fix the instalments afresh. The case of the defendants further is that until the date of the institution of the suit only Rs. 25,000/- have become due against

them and that they may be permitted to deposit the same by instalments. It was stated that there was no contract for payment of interest and hence, the claim of the plaintiff for Rs. 16250/- is wholly unsustainable. An objection has also been taken that the suit for Rs. 66250/- is premature. An objection to the effect that the suit for two instalments is time barred, was also taken.

4. The learned District Judge, by his order granted leave to defend on October 9, 1980 to the defendants under Order XXXVII, Rule 3(5), CPC on the condition that the defendants should deposit a sum of Rs. 25,000/- so admitted to be due within one month.

5. Aggrieved, the defendants have filed this revision u/s 115, CPC.

6. I have heard Mr. D.S. Shishodia, learned Counsel for the petitioners and Mr. Ram Singh Rathore, learned Counsel for non-petitioner No. 1 and have also read the application dated April 7, 1980 under Order XXXVII, Rule 3(5), CPC supported by the affidavit of K.S. Mathur, partner of the firm Bhopal Mining Works.

7. Appearing for the petitioners, Mr. D.S. Shishodia contended that the second provision to Rule 3(5) of Order XXXVII is void, as it is violative of Article 14 of the Constitution. His argument is two fold: (i) that in the application, which the defendants had filed under Order XXXVII, Rule 3, CPC, they have clearly narrated the circumstances for payment of Rs. 25,000/- by instalments and that right to pay by instalments is a substantive right of the defendants under Order XX, Rule 11, CPC. If the second proviso is allowed to operate, it would result in denial of the right to claim relief under Order XX, Rule II CPC, which is available to them. Mr. Shishodia submitted that the second proviso, thus, discriminates between the parties who are similarly situate by not leaving any option to the court seized of the case to pass suitable orders in appropriate circumstances in exercise of its sound judicial discretion; (ii) that the second proviso to Rule 3(5) of Order XXXVII discriminates the persons similarly situate as it enjoins upon the defendant to deposit the admitted amount before he is permitted to further pursue his defence and non-deposit of the amount is likely to render his whole defence nugatory. Mr. Shishodia elaborated his submission in this regard by contending that a dishonest plaintiff may with a view to obtain a decree swell his claim such beyond the amount which may really be due and thereby compel on honest defendant to deposit the real amount in court at the first instance or in the alternative to suffer a decree for whole of the amount and thereby compel the defendant to give up his right to claim instalments from the court. The crux of the argument of Mr. Shishodia is that second proviso to Rule 3(5) of Order XXXVII, CPC being discriminatory, is bad and as it offends Article 14 of the Constitution, it should be struck down. On the other hand, Mr. Rathore, learned Counsel for non-petitioner No. 1 strenuously contended that the second proviso to Rule 3(5) or Order XXXVII, CPC is not discriminatory and is constitutionally valid.

8. In view of the rival contentions raised by the learned Counsel for the parties, a short but important question that crops up for determination is whether second proviso to Rule 3(5) of Order XXXVII, CPC is constitutionally valid or it is invalid under Article 14 of the Constitution.

9. Before I proceed to answer the question aforesaid, I may briefly consider the scheme of Order XXXVII, CPC. Order XXXVII deals with summary procedure. Order XXXVII, Rule 2, which is enabling provision, deals with institution of summary suit. According to it, summons of the suit is issued first and when the defendant appears, the plaintiff has to serve on the defendant summons for judgment, and when summons for judgment is served upon him, the defendant has to obtain leave by the court to defend the suit. Detailed procedure for the appearance of defendant is provided in Order XXXVII, Rule 3 CPC.

10. The constitutional validity of Order XXXVII, so it existed then, was examined in *Ambalal Purshottamdas & Co. v. Jawarlal* AIR 1953 Cal 759, wherein it was observed:

It is true a difference is made between defendants in ordinary suits and defendants in suits based on negotiable instruments. There is good reason for this classification and for making difference in the treatment of defendants in these two classes of suits. Having regard to the law of negotiable instrument, specially of its presumptions in favour of consideration, it is, in my judgment, a legitimate provision of law to, say that in any suit based on such instrument the defendant will not have the same rights as an ordinary defendant where consideration has to be proved and not presumed, but that the defendant should come in the first instance and obtain the leave of the Court to defend a suit. The idea behind this procedure is that the Court is given a chance to see whether there is any substantial and honest defence to the suit or whether it is merely a device to delay or prevent recovery of moneys due on negotiable instruments whose place and importance cannot be over-emphasised in law merchant. In obtaining leave the defendant normally has to show & satisfy the court that although it is a suit on negotiable instrument and although consideration is presumed, he has nevertheless a good defence and he should be allowed to defend. In a proper case where the Court is so satisfied the defendant does not get leave to defend. I am of the opinion, in this context, therefore, that the comparison between defendants in ordinary suits and defendants in suits on negotiable instruments is not a comparison between similarly circumstanced individuals. I am also of the opinion for the same reason that the classification of suits based on negotiable instruments and those which are not, is not an unreasonable or baseless classification. I hold, therefore, that it is no discrimination on this ground.

The learned Judge further observed in para 13 of the report, as under:

Universal application of the same procedure to all courts is not an unfailing requirement of the Constitutional principles of equality before the law or of equal

protection of laws. The fact that Order 37, Civil PC does not apply to all courts in the land does not ipso facto make it unconstitutional on the ground. To my mind, the basic reason for holding this provision to be constitutional is that it is, in my opinion, still founded on a reasonable and substantial classification which cannot be said to infringe this constitutional principle of equality before the law.

The learned Judge was of the opinion that Order XXXVII, CPC is based on a reasonable and justifiable classification of Courts between those specified in Rule 1 of that Order and other courts.

11. Before the Chief Justice J.M. Shelat, as he then was, in *Sam M. v. S. Benjamin* 1966 GLR 87, a question arose whether the provisions contained in Order XXXVII, Rules 2 & 3, CPC, as they existed then, were violative of Article 14 of the Constitution or of the principles of natural justice. The learned Chief Justice was of the view that the provisions are not in breach of the principles of natural justice.

12. Before P.N. Bhagwati, J., as he then was, and N.K. Vakil, J. Rule 39 of the Small Cause Court Rules read with Order XXXVII, Rule 3, CPC, as it existed then, came up for consideration in *Navin Chandra v. Bachubhai* AIR 1969 Guj 124. The learned Judge amongst others, noticed *Ambalal Purshottamdas & Co. v. Jawarlal* AIR 1952 Cal 758 and *Sam M. Hasems v. Samsons J. Benjamin* 1966 GLR 87. The learned Judges observed as under:

...But as pointed out even examining from that angle the classification made between the plaintiff and defendant and the differentiation in the treatment to be given to their causes, is based on a rational basis relatable to the very object and policy for which the provisions have been brought into existence. The result is that this contention of the applicant must also fail. (Emphasis added).

In *Laxmidas Devidas v. Mathuradas* 1955 BLR 1118, the learned Judge of the Bombay High Court observed as under:

It has six often been stated that Article 14 does not require uniformity of application of law. What Article 14 prohibits is a classification which is not upon any rational basis. Article 14 does not prevent the Legislature from providing that laws shall apply differently to different persons or to different localities if in so providing the Legislature has in mind a rational classification. Article 14 prohibits a classification which has no rational basis or which is in substance discriminatory in character. The very expression "discriminatory" means that you apply one law to one party or to one locality and a different law to another party or a different locality without there being any reasonable object in doing so, and the question that we have to consider is whether, when the Legislature conferred the jurisdiction of trying summary suits only when the High Court and left it to the High Court to apply this provision to any civil Court subordinate thereto, it was passing a law which was discriminatory in character and preventing litigants from enjoying the protection of Article 14. The very basis of summary suits is that where there is commercial litigation commercial man should got expeditious

justice in respect of documents and transactions which are commercial in their nature and which require a quick disposal in order to give security and confidence to commercial men who are to a large extent responsible for the prosperity of the particular region or city where they reside and where they carry on their business or commerce.

It is clear from the aforesaid Calcutta and Gujarat High Court's decisions that for obtaining expeditious processing and speedy realisation of amounts pertaining to commercial transactions and further for the reason that there is a presumption of consideration u/s 18 of the Negotiable Instrument Act, summary procedure for institution and disposal of the suits have been provided under Order XXXVII.

13. The provisions of Order XXXVII, Rule 3, CPC were examined in Santosh Kumar v. Man Singh AIR 1958 SC 721, Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, , and Fateh Lal Vs. Sunder Lal, In none of these cases, the question of its constitutional validity was raised and their Lordships of the Supreme Court in Mechelas Eng.'s case AIR 1958 SC 721 approved all the principles propounded in Sm. Kiranmoya Dassi v. Dr. J. Chatterjee AIR 1949 Cal 479. This shows that in the matter of grant of leave to defend on condition and without condition, at no point of time, the constitutional validity of Order XXXVII, Rule 3(5) CPC was canvassed. It is apparent from Order XXXVII, Rule 3(5) that the court has discretion in the matter of attaching condition to the grant of leave to defend. Under second proviso to Rule 3(5) of Order XXXVII, CPC leave to defend cannot be granted unless the amount admitted to be due by the defendant, is deposited by him in court.

14. G. Marsha, in his book "Constitutional Theory, 1971 Edn. has stated as follows:

It being agreed that legislators may select different persons or groups for different treatment, since "classification is inherent in legislation," various things may be said about the conditions necessary to reconcile such classification or discrimination with the guarantee of equality. For example:

1. That between classification and legislative objects there must be some nexus.
2. That classification must be based on an intelligible differentiation.
3. That classification must be based upon some real and substantial distinction.
4. That classification must be relevant to the object of the legislation.
5. That classification must be rationally related to the object.
6. That classification must be fairly related to the object.
7. That classification must not be capricious or invidious.
8. That classification must not be arbitrary.
9. That classification must be reasonable.

10. That classification must be just.

It is well settled by a catena of cases of the Supreme Court that equality before the law means that among equals the law should be equal and should equally be administered and that the likes should be treated alike. Equality is for equals that is to say those who are similarly circumstanced are entitled to an equal treatment and that the guarantee of equality does not imply that the same rules should be made applicable to all persons despite differences in their circumstances and conditions. Classification may be founded according to the objects and as long as classification is based on rational basis and as long as all persons falling in the same class are treated alike, there can be no question of violating the equality clause. Here, I may notice. *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, , an which reliance was placed by Mr. Shishodia. Their Lordships, while considering the provision of Bombay Municipal Corporation Act (No. III of 1988), observed as under:

The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and other, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account.

This decision does not help the petitioners, for the procedure provided in Order XXXVII, Rule 3(5) cannot be said to attract the vice of discretion. The object of summary procedure is to provide a procedure in certain class of commercial claims which conduces not only to speedy disposal of matters but also to the speedy realisation of the amount. The classification can be made for achieving the object. It cannot be said to be arbitrary. It is just and reasonable. It applies equally to those similarly situate. In these circumstances, the contention of Mr. Shishodia that second proviso to Rule 3(5) of Order XXXVII CPC is bad being discriminatory is, therefore, rejected. I hold that it is based on reasonable and justifiable classification and it does not infringe Article 14 of the Constitution.

15. No other point was argued by any of the learned Counsel for the parties.

16. Mr. Shishodia submitted that in case second proviso to Rule 3(5) of Order XXXVII. CPC is held to be constitutionally valid, then the petitioners may be allowed time to deposit the amount to be due. In the impugned order, the District Judge directed that leave to defend is granted to the defendants on the condition of depositing the amount due from them within one month. This Court by its order dated November 10, 1980, stayed further proceedings in the suit including the order for the deposit of Rs. 25,000/-. This order was confirmed on February 9, 1981 to last until the disposal of the revision petition. In these circumstances the request of Mr. Shishodia that time may be allowed for depositing the sum of Rs. 25,000/- which has been made condition precedent for the grant of leave by the learned District Judge is not unreasonable. Having

regard to the circumstances of the case, I am inclined to accept this request and grant time upto July 1, 1981 for depositing Rs. 25,000/-.

17. The result is that except for the change that the defendants-petitioners may deposit the amount of Rs. 25,000/- by July 1, 1981, the order of the learned District Judge dated October 9, 1980, is confirmed.

18. The revision petition is, accordingly, dismissed. In the circumstances of the case, there will be no order as to costs.