

(1998) 02 PAT CK 0056
In the Patna High Court
Case No : Civil Review No. 76 of 1997

Bihar Solvent Extraction Co. and Others	APPELLANT
Vs	
Bihar State Forest Development Corporation Ltd.	RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 10, 115

Citation : AIR 1998 Patna 111 : (1998) 46 BLJR 1026 : (1998) 1 PLJR 671

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : V.N. Sinha, for the Appellant; Kishore Kr. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This application at the instance of defendants-petitioners has been filed for review of the judgment and order dated 28-6-95 by which this Court disposed of the Civil revision No. 350/91 with a direction that Title suit No. 8/ 78 shall be transferred from the Court of Deoghar to a Court at Patna for analogous hearing with a Money Suit No. 226/78.

2. It appears that the petitioners filed Title Suit No. 8/78 in the Court of Sub-Judge, Deoghar for declaration that the defendants have wilfully violated the terms of the agreement and is not entitled to any forfeiture clause of the agreement and a relief for damages was also claimed in the suit. The dispute arose out of an agreement executed by and between the parties with regard to sell and purchase of Sal Seeds. Subsequent thereto the plaintiff, who is opposite party here, filed Money Suit No. 226/78 in the Court of Sub-Judge, Patna for recovery of loss and damages because of the alleged breach of the agreement. The defendants petitioners of Money Suit No. 226/78 filed an application for the stay of the further proceeding of the aforesaid suit till the disposal of Title Suit No. 8/78 under S. 10 of the CPC (hereinafter referred to as the Code). The Court below in terms of the order dated 30-11 -90 stayed the trial of Money Suit No. 226/78 till the disposal of title Suit No. 8/78. Being aggrieved by the said order

the defendant opposite party moved this Court by filing Civil Revision No. 350/91 and challenged the order on the ground inter alia that the cause of action, the subject matter and the relief claimed in both the suits are different and the Court below wrongly exercised its jurisdiction and stayed the trial of Money Suit No. 226/78. Civil Revision was disposed of by Judgment dated 28-6-95 which is the subject-matter of this review petition. The learned Judge held in the operative portion of the order as under :--

"In the interest of early disposal of both the cases and to avoid the chance of conflicting judgments in the two cases, this Court orders that title suit No. 8/78 filed in the Court of Subordinate Judge, Deoghar by the Bihar Solvent Extraction Company against the Bihar Forest Development Corporation Ltd. and others now stands transferred to the Court of Subordinate Judge, Patna where Money suit No. 226/78 filed by the Bihar Forest Development Corporation Ltd. against the Bihar Solvent Extraction Company and others is being heard, and the Subordinate Judge Patna shall be hearing the two suits consolidating them together and award the judgment on all the issues raised in both the suits by the parties."

3. Mr. D. N. Sinha, learned counsel appearing for the petitioners submitted that there is error apparent on the face of the record inasmuch as the revision application was filed against the order by which the trial of one suit was stayed and the question of transfer of suit from one place to another or analogous hearing of the two suits was not the subject-matter of civil revision application. Learned counsel submitted that while hearing the civil revision application the Hon"ble Judge ought to have confined himself to the extent of validity of the order and ought not to have directed for transfer of Title suit No. 8/78 from Deoghar to Patna. Lastly learned counsel submitted that the learned Judge either would have allowed or dismissed the civil revision application but in no case one suit should have been transferred from Deoghar to Patna.

4. I have gone through the impugned order under review passed by the learned Judge and considered the operative portion of the judgment. It appears that although transfer of one suit from one Court to another or analogous hearing of both the suits were not the subject-matter of Civil Revision but the Hon"ble Judge took the view that in the interest of justice and for expeditious disposal of the suits directed the suit being Title suit No. 8/78 to be transferred from Deoghar to Patna and for analogous hearing of both the suits.

For better appreciation Sections 10 and 24 of the CPC is quoted here :--

Section 10 : Stay of suit.-- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in having jurisdiction to grant the relief claimed, or in any Court beyond the limits of established or continued by the Central

Government and having like jurisdiction, or before the Supreme Court."

Section 24 : "General power of transfer and withdrawal:--

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard or of its own motion without such notice, the High Court or the District Court may at any stage--

(a), transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and--

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1), the Court (is thereafter to try or dispose of such suit or proceeding), may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or

(3) For the purpose of this section,--

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "Proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of small causes shall, for the purposes of such suit, be deemed to be a Court of small causes.

(5) " A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."

5. From bare reading of provision of Section 10 of the Code it is manifest that the said provision is mandatory and it is previously instituted suit alone which should be proceeded and subsequent suit must be stayed. Even the Court has no jurisdiction to impose condition for staying the subsequently instituted suit. It is well settled that if the issues involved in the previously instituted suit are directly or substantially in issue in subsequent suit then the Court has no option but to stay the subsequently instituted suit. If the conditions provided u/s 10 of the Code are fulfilled then the Court should not exercise its inherent power u/s 151 of the Code. On the other hand, from reading the provision of Section 24 of the

Code, it appears that the provision confers a general power to the High Court to transfer suit, appeal or other proceeding at any stage either from the application of the party or its own motion. The High Court, therefore, can suo motu exercise that power and transfer suit, appeal or other proceeding from one Court to another.

6. Coming back to the power of review as provided under Order 47, Rule 1 of the Code, it is well settled that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the facts of each case. It is equally well settled that in case of error apparent on the face of the record application, is not required to prove the exercise of due diligence at the time of hearing of the matter as an excuse for omission to raise, a particular point. It is true that the transfer of case from one Court to another is desirable to avoid conflict of decisions on issues raising same question of fact and law. The basic and substantial ground that should weigh in the mind of the Court in passing an order is to see that the conflict of decisions on issue involving same question of fact by the different Court is avoided. The question, therefore, falls for consideration is that whether the Court should exercise its discretion u/s 24 of the Code by transferring one suit from one Court to another for analogous hearing ignoring mandatory provision of Section 10 of the Code. It is well settled that exercise of power u/s 24 of the Code is discretionary and should be exercised by the Court with extreme care and caution. It is always to the Court to find out from the allegation so made, whether any reasonable ground is made out for transfer of case and the Court must be satisfied that good atmosphere is likely to be extended between the parties if the case is transferred reposing full confidence upon the Court of justice.

7. In the facts and circumstances of the case, it appears to me that when the impugned order was passed the mandatory provision of Section 10 of the Code was not brought to the notice of his Lordships. From the impugned order passed by the Court below, it is clear that in both the suits pending at Deoghar and Patna all issues are directly and substantially involved in both the suits. The Court below, therefore, rightly stayed the trial of the subsequently instituted suit at Patna.

8. The learned counsel for the petitioners in civil revision fails to satisfy this Court that there is any error of law or error of jurisdiction committed by the Court below while passing the order staying the suit at Patna.

9. In that view of the matter, it appears to me that the impugned order proceeded on an erroneous assumption as to material fact and the relevant provision of Section 10 of the Code was not brought to the notice of this Court. For these reasons, I am of the opinion that there is error apparent on the face of the record and it is a fit case where the order should be reviewed.

10. In the result, this review application is allowed and the order dated 28-6-95

passed in Civil Revision No. 350/91 is reviewed.

11. As noticed above, I do not find any illegality or infirmity in the impugned order passed by the Court below while staying the suit pending at Patna. There is, therefore, no merit in the civil revision application which is, accordingly, dismissed.