

(2013) 04 TP CK 0006
In the Tripura High Court
Case No : CRP No. 7 of 2013

Bikram Ch. Das and Others Vs General Manager, N.F. Railway and Others

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 04 TP CK 0006

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

Bench : Single Bench

Advocate : S. Deb Gupta, for the Appellant; A. Lodh, S. Debnath and Mr. A. Debnath, for the Respondent

Final Decision : Disposed Off

Judgement

S.C. Das, J.—By this petition, filed under Article 227 of the Constitution of India, the petitioners challenged the legality and propriety of order dated 18.01.2013 passed by learned Civil Judge, Sr. Division, Court No. 1, Agartala, West Tripura in case No. M.S. 29 of 2011. Heard learned counsel, Mrs. S. Deb (Gupta) for the petitioners and learned counsel, Mr. A. Lodh for the respondents.

2. Facts, in short, for the disposal of the present petition may be stated thus:--

The petitioners as plaintiffs instituted the money suit, referred to above, praying for a decree directing the respondents to pay compensation of Rs. 4,00,000/- (four lakhs) for the death of their mother because of collapse of a boundary wall of the railway staff quarters of the respondents on 16.05.2010 at about 12-30 noon. The suit was contested by the respondents. In course of adducing evidence, the petitioners/plaintiffs submitted their examinations in chief by affidavit and also produced the documents in support of their case including that of FIR of a U.D. Case registered u/s 174 of Cr.P.C. and a certificate of postmortem of the deceased mother of the petitioners and the petitioners' evidence was closed. The date was fixed for cross examination of the defendants witnesses. At this stage, on 10.11.2012, the plaintiffs/petitioners filed two applications, one u/s 151 of CPC praying for setting aside order dated 09.10.2012 and to allow the plaintiffs/petitioners to adduce further evidence and

another application under Order 16, Rule 6 of CPC praying for summoning the witnesses requiring them to attend and produce certain documents. The defendants/respondents filed objection against the prayer and after hearing both side by impugned order dated 18.1.2013, learned Civil Judge, Sr. Division rejected both the petitions with the following observations:--

As I find that in the instant suit issues were framed on 04.05.12 and thereafter, the plaintiff side was directed to submit the examination in chief on affidavit of their witness and they also submitted the examination in chief on affidavit of their of witness and thereafter, their witnesses are duly cross examined by the defendant side and after closing of the chapter of plaintiffs witness the defendant side was directed to submit the examination in chief of their witness and they also comply the said order.

So, at this stage I find no reason to allow the said two petitions of the plaintiff and hence their two petitions are stands rejected.

3. The plaintiffs/petitioners felt aggrieved and hence filed the present petition challenging the order.

It is submitted by learned counsel Mrs. Debgupta that after the death of mother of the plaintiffs/petitioners, a U.D. Case, admittedly, was registered and the petitioners already brought on record the FIR and postmortem certificate but could not produce the report in final form submitted by the police officer as well as the postmortem report of their deceased mother since those were not available at the time when the suit was instituted. The evidence of the petitioners/plaintiffs has been closed but the evidence of both sides as a whole has not yet been closed. It is contended by learned counsel Mrs. Deb (Gupta) that there is nothing in law that the petitioners are absolutely barred in adducing any evidence after their part is closed for the time being. She has contended that the relevant law should not be read so stringently which will cause miscarriage of justice. According to Mrs. Deb(Gupta), for fair adjudication of the issue involved in the suit, the report finally submitted in the U.D. Case as well as the postmortem certificate and the inquest reports are very much necessary to prove the accidental death of the deceased mother of the petitioners and by rejecting the same, learned Civil Judge, Sr. Division practically strangled the plaintiffs/petitioners" case and as a result, plaintiffs/petitioners shall suffer irreparable loss.

4. Learned counsel, Mr. Lodh, per contra contended that the U.D. case is/was under investigation within the knowledge of the plaintiff/petitioners and they would collect the postmortem report and the inquest report of the U.D. Case at the time of settlement of issues and would bring it on record. There is no reason assigned as to why they could not collect and produce it at the relevant point of time and so, if the petition of the plaintiffs/petitioners is allowed at this stage, it endorse an endless process.

For appreciation of the submission of learned counsel of both side, let us reproduce here the provisions of Order 16, Rule 1 and 6 which reads thus:--

1. List of witnesses and summons to witnesses:--

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule(1).

6. Summons to produce document--Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

5. By the impugned order, learned Civil Judge, Sr. Division, as it appears, rejected the petition of the plaintiffs/petitioners taking into account the provisions prescribed in Sub-rule (1) of Rule 1 of Order 16 CPC. No doubt the petitioners were supposed to submit their list of witnesses and the documents, they relied on at the time of settling the issues, but that does not mean that the plaintiffs/petitioners were absolutely barred in making such a prayer subsequent thereto for calling a witness or for production of a document in evidence. Mrs. Deb (Gupta) in support of her contention relied on an unreported judgment dated 17.09.2012 passed by the learned Single Judge in writ petition No. 5546 of 2012 of the Gwalior Bench of Madhya Pradesh High Court, wherein the High Court relying on the decision of the Apex Court in the case of

Salem Advocate Bar Association, T.N. Vs. Union of India reported in (2005) 6 SCC 344

, has observed:

No procedure can become so stringent unless it prescribes in the manner in the Statute itself that it strangulates the ultimate justice. In other words, the use of word "shall" shows the intention of legislature which is to be read as directory.

In the case of Salem Advocate Bar Association (supra), the Apex Court while

dealing on Order 8, Rule 10 of CPC in Para 21 observed thus:--

21. In construing this provision, support can also be had from Order 8 Rule 10 . On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word "shall" in Order 8 Rule 1 , the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit in Order 8 Rule 10 . In construing the provision of Order 8 Rule 1 and Rule 10 , the doctrine of harmonious construction is required to be applied. The effect would be that under Order 8 Rule 10 , the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in order 8 Rule 1 . There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory.

6. In another case of

WKailash Vs. Nanhku reported in (2005) 4 SCC 480

while dealing with a matter under Order 8, Rule 1 of CPC, the Apex Court in Para 46 of the judgment observed thus:--

46. (iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Order 8 Rule 1 CPC is couched in negative form, it does not specify any penal consequences flowing from the noncompliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

7. The procedural law as prescribed in the Code of Civil Procedure, substantially meant for achieving justice. Where ever necessary, the procedural law shall be read to ensure justice. A negative reading of the procedural law forbidding a party may sometimes strangles ultimate justice.

The word "shall" used in Sub-rule (1) of Rule 1 of Order 16 CPC, ordinarily would appear to be mandatory in nature but it should be kept in mind that the provision in-fact prescribes a procedure to achieve justice. While the plaintiffs/petitioners placed on record the FIR and postmortem certificate of U.D. Case, they might not produce the postmortem report, inquest report and final police report of the U.D. Case at the time when the issues were settled and/or at the

stage of their evidence. But when they placed it on record before defence evidence was taken up, the trial Court would consider it and take it on record for the ends of justice since those documents prima facie are important for deciding the issues. The petitioners could not explain as to why they have failed to produce the same at the time of settlement of issues or at the stage of their evidence. Such failure may not be treated as a bar for them in placing the same before the Court at the stage of trial.

8. In the facts and circumstances of the case, I am of considered opinion that the learned Civil Judge has taken a hyper technical view in rejecting the applications filed by the plaintiffs/petitioners in respect of their adducing the documentary evidence which ought to be taken into account, since certified copies of those documents were placed on record. There is nothing to show that the plaintiffs/petitioners did not produce the same at the stage of settling the issues or at the time of adducing their evidence with an ulterior motive to delay the trial or to cause a hindrance in the matter of adducing evidence by the defendants. If those documents are taken on record, the defendants will be at liberty to cross examine the material witnesses, placing those documents and also will be at liberty to adduce evidence to controvert the evidence of the plaintiffs/petitioners if they so consider it necessary.

9. The impugned order passed by the learned Civil Judge, Sr. Division, West Tripura, Agartala, is, therefore, liable to be interfered and set aside and accordingly, I do so.

10. The petition filed by the petitioners under Order 16 Rules 1 & 6 is allowed. The petitioners may be allowed to put in evidence the final report of the U.D. Case, the inquest report and the postmortem report prepared over the dead body of deceased mother of the petitioners in connection with the U.D. Case, according to law.

11. The revisional application accordingly stands disposed of. Send back the L.C. records along with a copy of this judgment.