
(2005) 09 MP CK 0019
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1376 of 2004

Chotelal

APPELLANT

Vs

Sodarabai and another

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2005) 4 MPLJ 580

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : Smt. Mamata Shandilya, for the Appellant; Ku. Rekha Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.

This petition under Article 227 of the Constitution of India is at the instance of the original defendant in the suit. The petition is directed against order dated 18-10-2004 passed by trial Court in Civil Suit No. 12/A of 2004. By the order impugned, trial Court has rejected application submitted by petitioner for summoning defense witnesses. Application was rejected basically on the ground that application was filed after evidence of plaintiff was over. Thus, in the opinion of trial Court, application was filed to delay proceedings in the suit. On 8-11-2004, while issuing show-cause notices to respondents, this Court stayed further proceedings pending before trial Court.

Today petition was listed for admission. Since the contesting respondent/plaintiff is duly represented, therefore, with consent of learned counsel appearing for parties, arguments were heard to finally dispose petition on merits.

Learned counsel for petitioner submitted that petitioner and his defense witnesses are rustic villagers and are not aware of niceties of law or legal proceedings. It is clear from order impugned that it was contended that defense

witnesses were ready to enter the witness box and depose provided they were duly summoned by the Court, therefore, application was filed before trial Court. It was further submitted that application was not part of dilatory tactics but bona fide attempt to summon defense witnesses.

Per contra, learned counsel appearing for plaintiff/respondent No. 1 herein while supporting order impugned submitted that no names for witnesses were disclosed in the application presented before trial Court. Contents of application were vague; therefore, trial Court rightly rejected it by order impugned. According to learned counsel for respondent No. 1, there is no merit and substance in present petition and it deserves dismissal with heavy costs.

After having heard learned counsel for the parties and going through the material available on record, in the considered opinion of this Court, order impugned cannot be sustained and as such it deserves to be quashed. Learned Court below in the facts and circumstances of the case taking parochial view performed ritualistic observances of the rules of procedure. It would be useful to keep in mind that rules of procedure are handmaid of justice. Rules of procedure are not by themselves an end but the means to achieve ends of justice. It is well settled that procedural laws are meant to advance justice and not to hinder or thwart it. The language employed by the draftsman of procedural law may be liberal or stringent but the fact remains that the object of prescribing procedure is to advance the cause of justice and rigid approach divorced from ground realities may lead to miscarriage of justice on the anvil of mechanical exercise of discretion vested by law. In the considered opinion of this Court, in the facts and circumstances of the present case, trial Court ought to have given at least one fair opportunity to petitioner to summon defense witnesses through the Court. Since trial Court failed to exercise jurisdiction vested in it by law or at any rate acted with material irregularity, order impugned cannot be sustained in law and accordingly it is hereby set aside.

Since this Court has set aside the order impugned it does not mean that petitioner can be permitted to unnecessarily prolong proceedings in the suit. It would therefore be in the interests of justice to direct petitioner to submit the list of defense witnesses within a fortnight along with the requisite process fee and diet money etc. as is required under the law. In that eventuality, trial Court shall summon defense witnesses within reasonable time and record evidence. It is also made clear that any proclivity on the part of petitioner to adopt dilatory tactics hereinafter shall be curbed by the trial Court and the suit shall be decided at an early date. Accordingly, in view of the foregoing discussion, the writ petition is allowed. The petitioner however, shall render or pay to respondent No. 1 a sum of Rs. 500/- as costs when both of them appear before trial Court after a fortnight as ordered above because costs are a panacea for all ills of litigation. Needless to point out that any default with the above order would put back petitioner in the same position where he was by virtue of the impugned order passed by the trial Court.

In the result, writ petition is allowed to the extent mentioned above. Parties shall appear before the trial Court on 30-9-2005.