
(1971) 08 RAJ CK 0012
In the Rajasthan High Court
Case No : Special Appeal No. 53 of 1966

Firm Mohanlal Ramchandra	Vs	APPELLANT
The Union of India (UOI)		RESPONDENT

Date of Decision : 31-08-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 1, Order 27 Rule 2, Order 3 Rule 4(1), Order 3 Rule 4(2), Order 3 Rule 4(6)

Citation : AIR 1972 Raj 152 : (1971) RLW 445 : (1971) 4 WLN 298

Hon'ble Judges : Jagat Narayan, C.J.; J.P. Jain, J

Bench : Division Bench

Advocate : Sumer Chand Bhandari, for the Appellant; Raj Narain, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, C.J.—This is a plaintiff's special appeal against the judgment of a learned Single Judge of this Court in second appeal dismissing its suit for the recovery of compensation which was decreed by the trial court and the first appellate court.

2. The facts which were taken to have been proved by the first appellate court and which are binding in this special appeal are these. There was a firm Doongarmal Mohanlal at village Dholipal in, Ganganagar district, the proprietor of which was Mohanlal. Ridhkaran was the Munim of that firm. He was sent to Kesinga, (District Kalihandi, Orissa) to sell gram. After selling the gram he sent the sale proceeds to the said firm by post. On 18-7-57 he sent currency notes for Rs. 2,500/- by a registered insured parcel. The parcel was contained in a cloth cover on which it was written both in figures and words that it was insured for Rs. 2,500/-. During transit between Kesinga and Ganganagar the parcel was tampered with and currency notes for Rs. 1,000/- were removed from it. At the same time the amount of Rupees 2,500/- written in words and figures was altered to Rs. 1,500/-. In the records of Kesinga Post Office the parcel was

shown as having been insured for Rs. 2,500/-. The same amount was written on the postal receipt given to Ridhkaran. But in the records of Ganganagar and Dholipal Post Offices the amount for which this parcel was shown to have been insured was Rs. 1,500/-only. In the acknowledgment receipt which was signed by Mohanlal when the insured parcel was delivered to him the amount of Rs. 1,500/- only was written as the sum for which the parcel was insured. On 1-8-57 Ridhkaran came to Dholipal and told Mohanlal that he had sent Rs. 2,500/- and had insured the parcel for the same amount. It was then that Mohanlal learnt that the parcel had been tampered with and currency notes for Rs. 1,000/- were removed. On 3-9-57 Mohanlal transferred his claim to the plaintiff-firm Mohanlal Ram Chandra of Ganganagar which brought the present suit for the recovery of Rs. 1,040/-, out of which the sum of Rs. 40/- was claimed as interest.

3. The Union of India contested the suit by filing a written statement which was signed and verified by Shri Narula, Superintendent of Post Offices, North Rajasthan. The defendant denied the material allegations made in the plaint. The trial court decreed the suit for the recovery of Rs. 1,000/-. The appeal of the Union of India to the District Judge, Ganganagar, was dismissed. A second appeal was then filed on behalf of the Union of India in the High Court.

4. The memorandum of appeal was signed and presented by Shri Raj Narain, who was then Assistant Government Advocate in the High Court of Rajasthan. Along with this memorandum of appeal Shri Raf Narain filed a Vakalatnama signed by Shri Narula. Shri Narula authorised Shri Raj Narain to act as well as to plead by this Vakalatnama.

5. A preliminary objection was taken on behalf of the plaintiff-appellant that the appeal was incompetent as the memorandum of appeal had been presented by Shri Raj Narain, who had not been duly authorised to act on behalf of the Union of India. This preliminary objection was overruled by the learned single Judge. The first contention on behalf of the appellant before us is that the preliminary objection was erroneously rejected by the learned Single Judge. Having heard the learned counsel for the parties we are satisfied that this contention must be upheld.

6. Shri Raj Narain is now the Additional Advocate General of the State of Rajasthan and he appeared on behalf of the Union of India before us. He relied on all the arguments advanced by the learned Single Judge in support of his finding and advanced some fresh arguments also. We shall deal with all of them.

7. Firstly, he has relied on S.R.O. (Statutory Rules and Orders) No. 3920 dated 5-12-57 of the Government of India by which the Government Advocates of the Rajasthan High Court were appointed to be Government Pleaders for the purposes of Order 27, Rule 8B, C. P. C. in relation to any suit by or against the Central Government.

8. It is not disputed that presenting a memorandum of appeal amounts to acting for the party on behalf of whom the memorandum of appeal is presented. Order

8 deals with recognised agents and pleaders. Rule 1 of this order lays down that any appearance, application or act in any court required to be done by a party may be done by the party in person or by his recognised agent or by a pleader.

9. Rule 2 of this order lays down inter alia that recognised agents or parties are persons holding powers of attorney authorizing them to make and do such appearances, applications and acts on behalf of such parties. The relevant part of Rule 4 of Order 3 runs as follows:--

"(1) No pleader shall act for any person in any court unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorized by or under a power of attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party unless he has filed in Court a memorandum of appearance signed by himself and stating-

(a) the names of the parties to the suit

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorized to appear:

Provided that nothing in this Sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

(6) No Government pleader within the meaning of Order 27, Rule 8-B shall be required to present any document empowering him to act, but such pleader shall file a memorandum of appearance signed by himself and stating the particulars mentioned in Sub-rule (5).

(Added by Rajasthan)

Order 27 deals with suits by or against the Government. Rules 1 and 2 run as follows:--

"1. In any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

2. Persons being ex-officio or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognised agents

by whom appearances, acts and applications under this Code may be made or done on behalf of the Government."

10. Rule 8-B is in the following words:--

"In this Order unless otherwise expressly provided "Government" and "Government pleader" means respectively-

(a) in relation to any suit by or against the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order:

(b) XXXXXX and

(c) in relation to any suit by or against a State Government or against a public officer in the service of a State, the State Government and the Government pleader as defined in Clause (7) of Section 2, or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order." The contention of the learned Additional Advocate-General is that as the Government Advocate was appointed as Government pleader under Rule 8-B and that rule applies to every rule in Order 27 he should be deemed to have been authorised to act under Rule 2 of Order 27 on behalf of the Central Government. This argument in our opinion is wholly untenable. All that Rule 8-B lays down is that wherever the expressions "Government" and "Government pleader" occur in any rule of Order 27 they shall be read as "Central Government" and such pleader as the Central Government may appoint whether generally or specially for the purposes of this order. In Rules 1 and 2 of Order 27 only the expression "Government" occurs and in relation to the present proceedings this will be read as "Central Government". The expression "Government pleader" does not occur in Rule 2. Therefore, it cannot be argued that every Government pleader who is authorised to appear on behalf of the Central Government is also authorised to act for the Central Government without any express authority in that behalf.

11. Under S. R. O. 351 dated 25-1-58 the officers specified in the schedule annexed thereto were appointed as persons by whom complaints and written statements by or against the Central Government shall be signed and those of such officers who were acquainted with the facts of the case were further authorised to verify complaints and written statements in such suits. All Gazetted Officers of the Indian Posts and Telegraphs Department are included in this schedule. The Superintendent of Post Offices is a Gazetted Officer of the Posts and Telegraphs Department. As such Shri Narula was authorised to sign the written statement as contemplated by Order 27, Rule 1. Further as he was acquainted with the facts of the case he was also authorised to verify it under the same rule.

12. The learned Additional Advocate-General contended that because the Superintendent of Post Offices has been authorised to sign and verify the written

statement he should be deemed to have been authorised to act on behalf of the Central Government. This contention is also untenable. There are two distinct rules under Order 27 namely Rules 1 and 2. Under Rule 1 only a limited authority to sign and verify pleadings is given. It is only a person authorised to act without any such limitation who can present a memorandum of appeal. The Superintendent of Post Offices was not authorised to act for the Central Government under Order 27, Rule 2 by S. R. O. 351.

13. Another contention on behalf of the Additional Advocate General is that in view of Sub-rule (6) added to Rule 4 of Order 3 by Rajas than he should be deemed to be authorised to act for the Central Government as he was appointed Government pleader under Order 27, Rule 8-B. This contention also is without force. All that Sub-rule (6) lays down is that such Government pleader shall not be required to present any document empowering him to act. Sub-rule (6) is an exception to Sub-rule (2). Under Sub-rule (1) no pleader can act for any person unless he has been appointed by a document in writing, Sub-rule (2) lays down that such document in writing authorising him to act for any person shall be filed in Court. Sub-rule (6) lays down that a Government pleader within the meaning of Order 27, Rule 8-B shall not be required to present any document empowering him to act, and it shall be sufficient for him to file a memorandum of appearance signed by himself stating the particulars mentioned in Sub-rule (5). But a Government pleader cannot act without a general or special authority in writing empowering him to do so. He is not exempt from the requirement of Sub-rule (1) of Rule 4 of Order 3.

14. Next it was argued by the learned Additional Advocate General that the presentation of the appeal by him is an irregularity which is curable u/s 99, C. P. C. This section runs as follows:-- .

"99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any mis-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court."

15. The section deals with objections raised in appeal, as regards errors, defects or irregularities of procedure in the lower court. It has no application in the present case as the presentation of the memorandum of appeal by an unauthorised person was challenged on behalf of the plaintiff-appellant in the very Court in which the defect took place.

16. Next it was argued that the memorandum of appeal in the Court of the District Judge was presented by Shri K. G. Jain, Government pleader under a Vakalat-nama signed by the Superintendent of Post Offices and no objection was taken to it on behalf of the plaintiff-appellant in that court and so he should be deemed to have waived defects of a similar nature in future also. This argument is also untenable. As no objection was taken to the presentation of the appeal by an unauthorised person in the court of the District Judge the plaintiff-appellant

will be deemed to have waived objection against it which he could have taken. But he is not prevented from taking an objection to the presentation of a memorandum of appeal in the next higher Court by an unauthorised person.

17. We therefore bold that Shri Raj Narain the then Assistant Government Advocate of the Rajasthan High Court had no authority to present the memorandum of second appeal in the High Court. The second appeal was therefore incompetent and should have been dismissed.

18. On behalf of the plaintiff-appellant it was also contended before us that S. R. O. 3920 of 5th December, 1957 only authorised the Government Advocates of the Rajasthan High Court to appear for the Central Government and as Shri Raj Narain was only an Assistant Government Advocate he was not authorised even to appear for the Central Government. It is unnecessary for us to go into the question as to whether the expression "Government Advocates" in the schedule to S. R. O. 3920 included the Assistant Government Advocates also in the present case. We therefore leave it open.

19. It is also unnecessary for us to go into the question whether the suit should are been decreed on the facts proved in the present case as we have held above that the second appeal was incompetent.

20. We accordingly allow the special appeal, set aside the judgment and decree of the learned single Judge and restore the decree passed by the first appellate Court. The appellant is entitled to recover Costs of this Court and of the second appeal.