
(1955) 11 BOM CK 0020

In the Bombay High Court

Case No : Civil Revision Application No. 1563 of 1955

Girdharilal Mahadulal Agarwal

APPELLANT

Vs

Shah Nagji Acholdas

RESPONDENT

Date of Decision : 21-11-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3, 115

Citation : AIR 1956 Bom 256

Hon'ble Judges : Gajendragadkar, J

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; B.J. Kapadia and C.M. Chandarana, for the Respondent

Judgement

1. This is a revisional application by the defendant against the order passed by the learned Judge of the City Civil Court setting aside an ex parte decree passed against the petitioner on his depositing in Court a sum of Rs. 14,800/- within the time prescribed by the order. It appears that the petitioner has been sued by the opponents for price of goods supplied by the opponents as commission agents to the petitioner. The suit, was filed as a summary suit under Order 37.

After the suit was filed, an application was made for the interim attachment of the petitioner's property in Dhulia, This application was ultimately dismissed on the ground that there was no justification for attaching the petitioner's immovable property pending the suit. Thereupon the petitioner was called upon to deposit Rs. 9,000/- in order to enable him to put in his defence.

The deposit was not made by the petitioner, with the result that on 23-6-1955 an ex parte decree came to be passed. Thereafter the petitioner took out a notice of motion for setting aside the ex parte decree on 28-6-1955 and on this notice of motion the order under revision came to be passed. Mr. Joshi's grievance for the petitioner is that the learned Judge was in error in calling upon the petitioner to deposit Rs. 9,000/- in the first Instance before giving him conditional leave to defend.

It is not open to Mr. Joshi to urge this argument today-because I understand that the order originally passed by the learned trial Judge giving leave to the petitioner to defend on his depositing Rs. 9,000/- was challenged by Mr. Joshi's client by coming to this Court in revision and the revisional application was dismissed. In other words, the said order has now become final.

2. Then Mr. Joshi argued, that in view of the fact that the petitioner owns considerable immovable properties in Dhulia, and particularly in view of the further circumstance that an application for interim attachment was dismissed the learned Judge should not have called upon the petitioner to deposit Rs. 14,800/- for setting aside the ex parte decree; and in support of this contention Mr. Joshi has invited my attention to a decision of Dixit J. In -- "Somalal Nathalal v. Vasant Investment Corporation." 56 Bom LR 74 (A). This decision is not of much assistance to Mr. Joshi because in the present case I am dealing with orders passed under Order 37 of the Code.

In summary suits to which the provisions of Order 37 apply, it is usual to call upon the defendant to deposit a certain amount while giving him conditional leave to defend. The argument that the defendant owns Immovable property and that the decree-holder can realise his decretal amount by proceeding against the said immovable property cannot have much relevance in proceedings under Order 37. Whether or not conditional leave should be granted, and if conditional leave is to be granted, on what terms it should be granted, are matters in the discretion of the learned trial Judge.

In the present case, when the order under revision came to be passed, the learned trial Judge was absolutely right in putting the petitioner on terms so as to protect the Petitioners in respect of the amount which had already been decreed in their favour. Therefore, in my opinion, there is no substance in the grievance made by Mr. Joshi in the present revisional application.

Besides, on what terms the ex parte decree should have been set aside itself is a matter within the discretion of the learned trial Judge and this Court would be very slow to interfere in revision with such discretionary orders.

3. The result is, the application fails and the rule is discharged with costs.

4. Application dismissed.