
(1985) 07 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1181 of 1985

G.M. Worsted Spinning Mills

APPELLANT

Vs

Lakshmi Commercial Bank Ltd.

RESPONDENT

Date of Decision : 25-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 2, Order 12 Rule 2A, Order 12 Rule 3, Order 12 Rule 3A

Citation : AIR 1986 P&H 310 : (1985) 88 PLR 403

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Judgement

1. This revision petition has been filed against the order of Additional Senior Sub Judge, Faridabad dated 5th April, 1985, that the documents of the plaintiff would be deemed to be admitted by the defendant in view of R. 2A of O. 12 of the Code of Civil Procedure.

2. Briefly the facts are that Lakshmi Commercial Bank Limited, the respondent in the present revision petition, instituted a suit for recovery of Rs. 29,30,867.01 against the defendant-petitioner. The defendant contested the suit and filed the written statement on 4th Jan. 1985. The case was adjourned by the Court on that date to 22nd Jan 1985 for replication and admission and denial of the documents. On the adjourned date the replication was filed by the plaintiff. The defendant did not appear for admission and denial of the documents and an adjournment was requested on his behalf for that purpose. The Court, subject to payment of Rs. 30/- as costs, adjourned the case to 15th Feb, 1985 for admission and denial. Again the defendant did not appear on 15th Feb. 1985 and the adjournment was sought by his counsel. Adjournment was granted at the request of the counsel on payment of Rs. 30/- as costs, and the case was adjourned to 1st March, 1985. Again, on that date the defendant did not appear and a similar request was made as was done on earlier hearings. The Court still gave another opportunity to the defendant to appear on 22nd March, 1985, subject to payment of Rs. 50/- as costs. On 22nd March, 1985, the defendant

sent medical certificate that he was not feeling fit. The Court, in view of the medical certificate, gave last opportunity to him and the case was adjourned to 5th April, 1985. On that date too the defendant did not appear. The defendant's attorney and the lawyer expressed their inability to admit or deny the documents. Consequently the Court passed the impugned order. The defendant has come up in revision to this Court.

3. The learned counsel for the petitioners has argued that no notice was given by the plaintiff for admission of the documents to the defendant under R. 2, O. 12 and, therefore, R. 2A was not applicable. So, he urges, the impugned order is liable to be set aside.

4. I have duly considered the argument but do not find any substance in it. In order to deal with the same, it is necessary to reproduce Rr. 2, 2A, 3 and 3A of O. 12 of the Code:

"2. Either party may call upon the other party to admit, within fifteen days from the date of service of the notice any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing whatever the result of the suit may be, unless the Court otherwise directs;.....

2A. (1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved, otherwise than by such admission.

(2). Where a party unreasonably neglects or reuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

3A. Notwithstanding that no notice to admit documents has been given under Rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document."

5. From a reading of the rules it is evident that R. 2 authorises a party to serve a notice on the opposite party to admit the documents and provides further that the party neglecting or refusing to admit the documents after notice shall be liable to pay costs of proving the documents to the other party irrespective of the result of the suit. R. 3 prescribes the form of notice. R. 3A empowers the Court to call upon a party to admit documents. It was inserted by the CPC

(Amendment) Act, 1956 with the purpose that Court should be conferred with the same powers as have been conferred on a party under R. 2. It does not prescribe the penalty if party neglects or refuses to admit the documents though R. 2 prescribed one. However, the penalty prescribed in R. 2 for refusing or neglecting to refuse to admit could not bring about the desired effect. In order to make the provisions of R. 2 and R. 3A more effective, the Legislature in its wisdom introduced R. 2A which further provides that if a party called upon to admit documents does not admit or neglects or refuses to admit the same, the documents shall be deemed to be admitted. The rule does not give the Court a blanket power to order all documents to be admitted in case the party refuses or neglects to admit them. A safeguard has been provided in the rule regarding those documents which have been denied specifically or by necessary implication or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents.

6. With this background it is to be seen now whether without service of notice by the plaintiff-respondent to admit documents, could the Court pass an order under R. 2A. It is well settled that different provisions of a statute should be construed harmoniously. If the said rules are read together, it is clear that R. 2A covers not only those cases where a notice has been served by a party on the other party under R. 2 but also those cases where the Court directs a party to admit the documents and it refuses or neglects to admit such documents.

7. Now I advert to the facts of the case. The petitioner was given as many as six opportunities to admit the documents but he did not appear in spite of the fact that the costs were awarded against him. It is thus clear that he wanted to delay the suit on one pretext or the other. Consequently I do not find any substance in the revision petition.

8. Before parting with the judgment it may be mentioned that it has not been specified by the Court as to which of the documents would be deemed to be admitted. R. 2A as already mentioned above, provides that even if a party fails to admit the documents, certain documents cannot be deemed to be admitted. In case there are such documents on the file, the defendant may make an application bringing to the notice of the Court those documents and the matter will be decided by it in accordance with law.

9. For the aforesaid reasons I dismiss the revision petition subject to the observations made above. No order as to costs.

10. Revision dismissed.