
(1983) 07 CAL CK 0024
In the Calcutta High Court
Case No : C.R. No. 3670 of 1981

Gopal Chakraborty

APPELLANT

Vs

Sm. Sabitamoyee Ghosh and Others

RESPONDENT

Date of Decision : 14-07-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 5, 115

Citation : AIR 1984 Cal 47 : 87 CWN 952

Hon'ble Judges : A.M. Pal, J

Bench : Single Bench

Advocate : Tapas Roy and Manabendra Banerjee, for the Appellant; Subodh Bhattacharyya and Kajal Kumar Bera, for the Respondent

Judgement

A.M. Pal, J.—This Rule arises out of an application u/s 115 of the Civil P. C. and is directed against Order No. 12 dated August 19, 1981 passed by the Judge, Second Bench, City Civil Court, Calcutta in Title Suit No. 2471 of 1980 rejecting a petition made by the defendant-petitioner Gopal Chakraborty under Order 6, Rule 5 of the Code.

2. Facts of the case shortly are that the Plaintiffs-opposite parties filed a suit in the City Civil Court against the petitioner herein for a decree declaring that the defendant has no right to enter into or possess the shop room, decree for accounts and a decree for possession and for other reliefs ancillary thereto.

3. The defendant before filing the written statement made an application for particulars. The learned Judge dismissed the said application stating that "in the garb of better particulars the defendant wants the plaintiffs to disclose their evidence before the defendant has filed his written statement." ____

4. Mr. Tapas Roy, learned Advocate appearing for the petitioner refers the plaint to me and argues analysing para by para of the plaint that all the particulars were necessary and by refusing those particulars, the learned Judge has fallen into material irregularity/defect by not taking into consideration the provisions of

Order 6, Rules 2 and 5 of the Civil P. C. He further argues that those particulars that were asked for are absolutely necessary for filing the written statement and his further contention is that his client has asked for particulars only for those statements in the plaint which are very vague and for which clarification is necessary,

5. Mr. Bhattacharyya, learned Advocate appearing for the plaintiffs/opposite parties argues before me that the particulars that are sought for are in the nature of "fishing" and the learned Judge rightly rejected it. Mr. Bhattacharyya further argues that the particulars that have been asked for are within the special knowledge of the defendant and as such the (application?) should not be allowed. It will be disclosure of the evidence before the suit is heard.

6. But main argument of Mr. Bhattacharyya is that revisional application is not maintainable in matters of such nature. He refers to me the provisions of Section 115 of the Civil P. C. and contends that such application would lie only when "a case has been decided" by any Court subordinate to High Court, The order that is passed, according to Mr. Bhattacharyya is not a decision in any case and he further contends that it is not a proceeding in the meaning of Section 115(a) of the Civil P. C.

7. In reply to the argument of Mr. Mukherjee (Bhattacharya) Mr. Roy has referred to me a judgment reported in Sukumar Chatterjee Vs. Kiran Chandra Mitter, . The Division Bench of our Court held that the word "case" in Section 115 of the Civil P. C. has a wider context that the term suit or appeal and in my view, the word "proceeding" cannot be confined to the proceedings of suit or appeal and as such the contention of Mr. Bhattacharyya that in such matter which involves the question of furnishing of particulars application for revision does not lie as it is not a case decided in a proceeding is not acceptable. Following the judgment I hold that case has a wider meaning and it is not confined to suit or appeal, I further hold that in a proper case in such matters which can be said to be proceeding application for revision is maintainable to prevent any irreparable loss or injury.

8. But there are number of decisions which held that the word "case" is wide to include an interlocutory order and that the High Court has the power to interfere in revision of an order passed at any stage of a suit though there may be another remedy open to the injured party. In this case the defendant is entitled to some of the particulars which I shall indicate presently. I cannot go into the merit of this case at this stage but this well-known principle that when an agreement is alleged the pleading should state the date of the agreement, the names of the parties and whether it was in writing or verbal. Plaintiff says that the defendant was appointed a caretaker. The appointment of a caretaker is a matter of a agreement. The plaintiff cannot escape the liability by stating that the defendant had knowledge of such an agreement and so he was not under the responsibility for furnishing the particulars. He has to furnish the particulars of the appointment of the caretaker as best as he can because in a case of an

agreement if pleaded, the particulars of the same are to be furnished giving the date, names of the parties and further stating whether it is oral or written.

9. As I have indicated before the objections of Mr. Bhattacharyya do not appear to me to be very convincing specially after the amendment of Section 115 of C. P. C. The proviso to Section 115 has its exceptions after the amendment and they are as follows:--

(a) the order, if it had been made to favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

10. We have to interpret those words "case decided" and "proceeding" in the entire context of the section. If any irreparable injury or failure of justice caused to a party by any order passed by the Court is given liberty to revise the order, the order is passed in a proceeding which according to Supreme Court includes a part of the proceeding.

In Major S.S. Khanna Vs. Brig. F.J. Dillon, . Supreme Court, observed, "The expression "case"" is a word of comprehensive import ; it includes civil proceedings other than suits, and is not restricted by anything contained in the section to the entirety of the proceeding in a Civil Court. To interpret the expression "case" as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of powers of superintendence to which the jurisdiction to issue writs, and the supervisory jurisdiction are not subject, and may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice..... ..

The expression "case" includes a suit, but in ascertaining the units of the jurisdiction of H. C., there would be no warrant for equating it with a suit alone." In Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, Supreme Court observed: "To interpret the expression "case" as an entire proceeding only and not a part of the proceeding imposes an unwarranted restriction on the exercise of powers of superintendence and may result in certain cases in denying relief to the aggrieved litigant where it is most needed and may result in the perpetration of gross injustice."

11. Considering the judgments referred to above and the provisions of law as indicated herein and after hearing the rival contention of the parties I hold that this order passed in an application of furnishing of particulars under Order 6, Rule 5, is valid.

In a proper case in such a matter which can be said to be "proceeding"; application for revision is maintainable to prevent any irreparable loss caused to a party from an order which can be said to be a decision in a "case" which has a wider meaning and not confined to suit or appeal.

12. I have scrutinised the particulars sought for along with the plaint. The learned Judge should not have rejected the application for particulars outright. After hearing the rival contentions I hold and direct the following particulars are to be given and I specify them hereinbelow:

- (a) No particulars need be given so far as Paragraph 2 of the plaint is concerned
- (b) Regarding Paragraph 4 of the plaint the plaintiffs should give particulars whether the appointment of caretaker was done orally or in writing with the date thereof. If in writing, if possible the date of appointment is to be given.
- (c) No particulars need be given of Paragraph 5.
- (d) Regarding Paragraph 6 the plaintiffs would give the particulars of "some amounts" and "certain amounts"" as specified in the said paragraph.
- (e) The plaintiffs would also give the particulars as to whether the sums that were paid as specified in paragraph 6 of the plaint were paid by cheque or in cash and the dates of such payment if possible.
- (f) Regarding Paragraph 7 of the plaint particulars would be given whether the request that was alleged to have been made, was made orally or in writing.
- (g) No particulars need be given of Paragraph 9 or 11 of the plaint.

13. I dispose of this Rule accordingly with the directions made above. The stay order is vacated. The learned Judge will fix the date within which the particulars are to be given. The written statement will be filed within a date as fixed by the learned Judge after the particulars are given.

14. The stay order is vacated and there will be no order as to costs.

15. Let the records go down immediately.