
(1992) 07 GUJ CK 0027
In the Gujarat High Court

Gupta Investment Centre

APPELLANT

Vs

Priyakant Chandravadan Mogal

RESPONDENT

Date of Decision : 23-07-1992

Acts Referred:

Civil Procedure Code, 1882 — Section 136

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 21, Order 11 Rule 21

Citation : (1992) 2 GLR 1357

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the learned 3rd Joint Civil Judge (S.D.) at Baroda on 11th August, 1986 below the application at Exh. 3 in Special Civil Suit No. 210 of 1980 is under challenge in this Appeal from Order. Thereby the learned trial Judge was pleased to dismiss the present appellant's suit under Order 11 Rule 21 of the Code of Civil Procedure, 1908 ("the Code" for brief).

2. It appears that the present appellant filed one suit against the present respondent in the Court of the Civil Judge (S.D.) at Baroda for a decree in the sum of Rs. 68,935.68 ps. It was registered as Special Civil Suit No. 210 of 1980. The present respondent appears to have filed his written statement and resisted the suit. He appears to have made one application in the suit proceedings calling upon the present appellant to produce certain books of accounts purported to have been relied on by it in support of the decree as prayed for. That application appears to have been taken on the record of the suit proceedings as Exh. 33. The suit appears to have been assigned to the 6th Joint Civil Judge (S.D.) at Baroda. By his order passed on 10th April, 1986 below the application at Exh. 33 in the suit proceedings, the learned Judge directed the present appellant to produce the documents as prayed for in the application or to file an affidavit in the prescribed form on or before 25th April, 1986. It appears that the aforesaid order passed by the learned Judge on 10th April, 1986 was not complied with by the present appellant. It appears that the suit was thereafter assigned to the learned 3rd Joint Civil Judge (S.D.) at Baroda for trial and disposal. By his order

passed on 11th August, 1986 below the application at Exh. 33 in Special Civil Suit No. 210 of 1980, the learned Judge was pleased to dismiss the suit under Order 11 Rule 21 of the Code for non-compliance with the earlier order passed on 10th April, 1986. The aggrieved appellant has questioned the correctness of the said order by means of this Appeal from Order.

3. The principles governing the method and the manner for exercise of powers under Order 11 Rule 21 of the Code are succinctly laid down by the Supreme Court in its ruling in the case of Babbar Sewing Machine Company Vs. Trilok Nath Mahajan, . It has been held:

Section 136 of the Civil Procedure Code, 1882, corresponding to Order 11, Rule 21 of the Civil Procedure Code, 1908 was based upon Order 31, Rule 20, now replaced by Order 24, Rule 16 framed under the Judicature Act. The practice of the English Court is, and it has always been, to make the order a conditional one, and to grant a little further time for compliance. In practice this provision is virtually obsolete. Even assuming that in certain circumstances the provisions of Order 11, Rule 21 must be strictly enforced, it does not follow that a suit can be lightly thrown out or a defence struck out, without adequate reasons. The test laid down is whether the default is wilful. In the case of a plaintiff, it entails in the dismissal of the suit and, therefore, an order for dismissal ought not be made under Order 11, Rule 21, unless the Court is satisfied that the plaintiff was wilfully withholding information refusing to answer in interrogatories or by withholding the documents which he ought to discover. In such an event, the plaintiff must take the consequence of having his claim dismissed due to his default, i.e., by suppression of information which he was bound to give. In the case of the defendant, he is visited with the penalty that his defence is liable to be struck out and to be placed in the same position as if he had not defended the suit. The power for dismissal of a suit or striking out of the defence under Order 11, Rule 21, should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party.

An order striking out the defence under Order 11, Rule 21 of the Code should, therefore, not be made unless there has been obstinacy or contumacy on the part of the defendant or wilful attempt to disregard the order of the Court. The rule must be worked with caution, and may be made use of as a last resort.

xxx xxx xxx The principle governing the Court's exercise of the discretion under Order 11 Rule 21, as already stated, is that it is only when the default is wilful and as a last resort that the Court should dismiss the suit or strike out the defence, when the party is guilty of such contumacious conduct or there is a wilful attempt to disregard the order of the Court that the trial of the suit is arrested.

4. It becomes clear from the aforesaid principles of law enunciated by the Supreme Court in its ruling in the case of Tirlok Nath Mahajan (supra) that the

trial Court has to take into consideration several factors before resorting to O. 11, Rule 21 of the Code. Such consideration of various factors should manifestly reflect in the ultimate order that may be passed by the trial Court. It would mean that the order passed by the trial Court under Order 11 Rule 21 must be a speaking order. It must contain reasons for exercise of the extreme powers thereunder.

5. In the present case, the impugned order passed by the learned trial Judge is quite cryptic. It reads: "The plaintiff has not produced documents nor he has filed affidavit as ordered. Hence suit is dismissed under O. 11 R. 21 of C.P.C. No order as to costs". This order *ex facie* takes into consideration none of the factors as are required to be considered in view of the aforesaid ruling of the Supreme Court in the case *Tirlok Nath Mahajan (supra)*. It is a non-speaking order. It contains no reasons why the power of dismissal of the suit for non-compliance with the earlier order was required to be exercised. It does not show or suggest why the extreme action of dismissal of the suit was resorted to under Order 11 Rule 21 of the Code. With respect, the only merit of the impugned order is its brevity. Brevity in passing an order cannot be appreciated when a speaking order is required to be passed after taking into consideration several factors in view of the principles of law enunciated by the Supreme Court in its ruling in the case of *Tirlok Nath Mahajan (supra)*.

6. In view of my aforesaid discussion, the impugned order passed by the learned trial Judge cannot be sustained in law. It deserves to be quashed and set aside.

7. In the result, this Appeal from Order is accepted. The impugned order passed by the learned 3rd Joint Civil Judge (S.D.) at Baroda on 11th August, 1986 below the application at Exh. 33 in Special Civil Suit No. 210 of 1980 is hereby quashed and set aside. There shall however be no order as to costs on the facts and in the circumstances of the case.

It appears that the suit has been filed way back in 1980. Nearly 12 years have rolled by. It is therefore desirable that the suit is disposed of as expeditiously as possible. The trial Court is therefore directed to accord the top-most priority to the disposal of the suit preferably by 31st March, 1993.