

(2016) 08 CHH CK 0043

In the Chhattisgarh High Court

Case No : Civil Revision No. 29 of 2016.

Gyan Ganga Education Academy through its Chairman, Village Narhada, Balauda Bazar Road, Post Narda, P.S. Vidhansabha Thana, Civil and Revenue District Raipur, Chhattisgarh - Appellant @HASH Smt. Suman Dheer, wife of Shri B.K. Dheer, aged about 70 years, r

Date of Decision : 05-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2

Citation : (2016) 167 AIC 656 : (2017) AIRCC 1453

Hon'ble Judges : Shri. Deepak Gupta, CJ.

Bench : Single Bench

Advocate : Shri. Ravish Agrawal, Senior Advocate with Shri Sunil Pillai, Advocate, for the Appellant; Shri. Kishore Bhaduri and Shri. Roop Naik, Advocates, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

Shri. Deepak Gupta, C.J. - This case is a glaring example of the misuse of the judicial process to stall and delay the judicial proceedings. The civil suit out of which this revision petition arises was filed almost 18 years back and evidence is still to be recorded.

2. The present revision petition under Section 115 of the Code of Civil Procedure (hereinafter referred to as "the CPC") is directed against order dated 22.01.2016 passed by the Third Additional District Judge, Raipur in Civil Suit No.9A of 2012 whereby the learned Trial Court rejected the application filed by the Applicants/ Defendants No.1 and 2 under Order 14, Rule 2 (2) of the CPC for treating issue No. 10 as a preliminary issue.

3. At the out set, it would be relevant to set out the parameters of the dispute to really understand the issue involved in this case. The Plaintiffs/ Respondents No.1 and 2 herein filed a civil suit before the Trial Court on 11.09.1998 for seeking declaration and permanent prohibitory injunction. The case of the Plaintiffs is that Late Shri Upendra Shandilya along with the Plaintiffs and one

Shri R.P. Singh had set up an educational institute under the name and style of Gyan Ganga Educational Academy. This was registered as a company under the Companies Act. The case of the Plaintiffs was that they had invested huge amount of money in the said company. Later on, the name of the institute was changed to Gyan Ganga Educational Institute. According to the Plaintiffs, Defendants No.2 and 4 and Late Upendra Shandilya formed a company and got the same registered with the Registrar of Companies at Gwalior. The Plaintiffs were made to believe that they had 8% shares in the company. One of the Plaintiffs, namely, Smt. Suman Dheer was made a Director and she invested huge sums in the company, but never get any return. According to the Plaintiffs, they had been removed from the company without any proper notice and such decision taken by the company is illegal. Initially, in the said civil suit the Plaintiffs had prayed for certain reliefs, but later on, various amendments were made, and more reliefs claimed.

4. As noted above, the suit was filed on 11.09.1998. The Defendants filed their written statements on 03.02.1999. Thereafter, on 24.03.1999 the Defendants filed an application under Order 7, Rule 11 (d) of the CPC for rejection of the plaint. This application was dismissed by the learned Trial Court on 12.10.1999. Aggrieved by the said order, the Defendants filed Civil Revision No.449 of 2000 before this Court, which was dismissed as withdrawn with liberty reserved to the Applicants to take appropriate remedy under the law, on 29.07.2005. Therefore, the original Defendants virtually accepted the order passed by the learned Trial Court.

5. Thereafter, the original Defendants had filed another application under Order I Rule 13 read with Order 15, Rule 2 of the CPC in which it was stated that Defendant No.1 is a separate body and Defendants No.2 to 4 and the Plaintiffs have no connection with it and therefore, Defendant No.1 be deleted from the array of parties. The learned Trial Court dismissed said applications vide order dated 01.02.2000 and held that these issues would be decided after framing of the issues. Aggrieved by the said order, the Defendant filed Civil Revision No.448 of 2000 before this Court, which was disposed of by this Court on 18.04.2000.

6. On 06.11.2000, the following preliminary issue was framed "Whether the civil suit is not maintainable in view of Section 10 of the Companies Act". The learned Trial Court vide order dated 01.01.2001 decided the preliminary issue and held that the entire matter did not fall within the purview of the Companies Act and as such the suit was maintainable. Aggrieved by this order, the Defendant filed Civil Revision No. 220 of 2001 before this Court. It was dismissed as not maintainable, however the Defendants were permitted to raise the grounds by filing appropriate proceedings. In my view, this obviously meant that the Defendants could have filed proceedings under Article 226 of the Constitution. This was not done and the order dated 01.01.2001 has attained finality.

7. Thereafter, the Defendants had filed another application under Order 7, Rule 11 (a) of the CPC on 04.04.2001. This application was also dismissed by the

learned Trial Court vide order dated 17.08.2001.

8. In the meantime, an amendment application was filed by the Plaintiffs and Gyan Ganga Educational Institute Private Limited was incorporated as a party. It would be pertinent to mention that this party though not properly described, was already arrayed as a party earlier. Two years after incorporation of the said party, the defendants had filed a similar application under Order 7, Rule 11 (d) of the CPC. This application was dismissed by the learned Trial Court on 07.07.2004. Thereafter, written statement was filed by Defendant No. 5 and issues were framed on 07.05.2005.

9. Thereafter, the Plaintiffs had filed an application under Order 11, Rule 14 of the CPC praying that the Defendant may be directed to produce certain documents. This application was allowed vide order dated 13.04.2006. The Plaintiffs filed another application under Order 7, Rule 14 (3) of the CPC. The Defendants raised an objection that the documents sought to be proved were not properly stamped and should not be taken on record. The learned Trial Court vide order dated 07.08.2006 allowed the application filed by the Plaintiffs and held that as and when the documents are sought to be exhibited, then such objection can be raised. The case was fixed for evidence of the parties on 12.09.2006.

10. On 10.04.2007, the Plaintiffs filed statements of two witnesses, namely, Shri B.K. Dheer and Smt. Rajkumari Kanda by way of affidavits under Order 18, Rule 4 of the CPC. The Plaintiffs also filed an application under Order 10, Rule 2 of the CPC. Thereafter, other miscellaneous matters were argued and the plaint was again amended.

11. On 12.11.2007, the Defendants filed another application under Order 7, Rule 1 (e), 1(g) and Order 7, Rule 11 (a) and 11(d) of the CPC. This application was dismissed by the learned Trial Court on 25.09.2008. No evidence was led in the suit because either the Plaintiffs or the Defendants kept filing interim applications. However, the result was that the evidence was not recorded.

12. When the case ripened for evidence, the Defendants filed another application under Order 7, Rule 11 of the CPC on 12.02.2013. This application was dismissed by the learned Trial Court on 14.05.2015 mainly on the ground that issue No.10 which was sought to be treated as preliminary issue, has already been decided by order dated 01.01.2001 and other matters would be considered at the stage of evidence. Against this order, the Defendants filed Civil Revision No.60 of 2015 before this Court. This revision petition was withdrawn by learned counsel for the Applicants/ Defendants with liberty to pray before the learned Trial Court that issue No.10 as framed on 07.05.2005 be treated as a preliminary issue. This Court did not pass any express order with regard to the prayer for liberty, but disposed of the civil revision as withdrawn. Thereafter, the Defendants filed an application under Order 14, Rule 2 (2) of the CPC, which was dismissed by the learned Trial Court on 22.01.2016 on the ground that issue No.10 has already been decided by the learned Trial Court on 01.01.2001. It was further held that

this issue could not be treated as a preliminary issue when the case has been pending for so long.

13. By means of this revision petition, it is prayed that issue No.10 as framed on 07.05.2005 be treated as preliminary issue. In my opinion, this revision petition is just an abuse of process of Court and has been filed to delay the proceedings.

14. Order 14, Rule 2 before its amendment by the Amending Act of 1976, reads as follows:

"Order 14, Rule 2 - Issues of law and fact. - Where the issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined."

15. After amendment Order 14, Rule 2 of the CPC reads as follows:

"2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

16. A comparison of Rule 2 prior to the amendment and as it presently stands now, leaves no manner of doubt that the Legislature in its wisdom has brought about a radical change. Under unamended Rule 2, a duty was cast upon the Court to first decide the issues of law only and postpone the settlement of issues of fact until after the issues of law have been determined and decided. Now, the position is just reverse. The Court under sub-rule (1) of Rule 2 is bound to pronounce judgment on all issues even if the case can be disposed of on the basis of preliminary issue. Sub-rule (2) as now incorporated mandates that if the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first. This is, however, subject to two conditions; firstly that the issue relates to jurisdiction of the Court or secondly the issue relates to a bar to the suit created by any law for the time being in force. Therefore, the only issues which can be treated as preliminary issues are the issues relating to jurisdiction of the Court and the issue relating to bar of the suit created by a statute. No other issue can be treated as a preliminary issue. Another aspect of this rule is that if the Court forms an opinion that it can

dispose of the suit only on the basis of a finding given on a preliminary issue, it should postpone settlement of other issues until after that issue has been determined. What law enjoins is that all issues should not be framed and only issues which can be treated to be preliminary issues in terms of sub-rule (2) should be framed. Even if one was to take slightly more flexible view, it would only mean that when all issues are framed on that very day the Court must determine which of the issues, if any, are to be treated as preliminary issues within the meaning of sub-rule (2) and proceed to treat them as preliminary issues.

17. To understand the reason for amending the law, it would be pertinent to refer to the following observations of the Law Commission of India, which led to amendment of the unamended Order 14, Rule 2 :

"This rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force."

18. The statement of objects and reasons accompanying the amending Act whereby Rule 2 was amended, read thus:

"Clause 67-Sub-clause (ii). - Rule 2 is being substituted to provide that although a suit can be disposed of on a preliminary issue, the Court shall ordinarily pronounce judgment on all issues; but where any issue relating to the jurisdiction of the Court or a bar created by any law for the time being in force, the Court may postpone settlement of the other issues until the preliminary issue with regard to the jurisdiction of the Court or such bar has been determined and the Court may deal with the suit in accordance with the determination of such preliminary issue."

19. Dealing with this amendments and its effect, a Full Bench of Himachal Pradesh High Court in CMPMO No. 40 of 2006 (Prithvi Raj Jhingta and Another v. Gopal Singh and Another) held as follows:

"The legislative mandate is very clear and unambiguous. In the light of the past experience that the old Rule 2 whereby, in the fact situation of the trial Court deciding only preliminary issues and neither trying nor deciding other issues, whenever an appeal against the judgment was filed before the Appeal Court and the Appeal Court on finding that the decision of the trial Court on preliminary issues deserved to be reversed, the case per force had to be remanded to the trial Court for trial on other issues. This resulted in delay in the disposal of the cases. To eliminate this delay and to ensure the expeditious disposal of the suits,

both at the stage of the trial as well as at the appeal stage, the legislature decided to provide for a mechanism whereby, subject to the exception created under sub-rule (2), all issues, both of law and fact were required to be decided together and the suit had to be disposed of as a whole, of course based upon the findings of the trial Court on all the issues, both of law and fact.

Based upon the aforesaid reasons therefore, and in the light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of sever-ability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a Court because sub-rule (1) does not permit the Court to adopt any such principle of sever-ability and to dispose of a suit only on preliminary issues, or what can be termed as issues of law. Sub-rule (1) clearly mandates that in a situation contemplated under it, where all the issues have been framed together and have also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the Court covering all the issues framed in the suit."

20. I am in respectful agreement with this law laid down in the aforesaid judgment. Once all issues have been framed and the case has been fixed for evidence, then the Court is powerless to treat any issue as a preliminary issue. Therefore, the revision petition filed by the Petitioners/Defendants No. 1 and 2 is wholly without merit.

21. Before parting with this case, I am constrained to observe that the Petitioners/Defendants No. 1 and 2 have filed one application after the other under Order 7, Rule 11 of CPC for rejection of the plaint. No party can be allowed to do sully the judicial process by taking undue advantage of the provisions of law.

22. The Apex Court has deprecated such practise and the time has come when uncalled for and frivolous litigations must be dealt with strictly by imposing exemplary costs. In this behalf, reference may be made to the decision of the Apex Court in Ramrameshwari Devi and Others v. Nirmala Devi and Others ((2011) 8 SCC 249) wherein the Apex Court observed as follows:

"49. The learned amicus articulated the common man's general impression about litigation in following words:

Make any false averment, conceal any fact, raise any plea, produce any false document, deny any genuine document, it will successfully stall the litigation,

and in any case, delay the matter endlessly. The other party will be coerced into a settlement which will be profitable for me and the probability of the court ordering prosecution for perjury is less than that of meeting with an accident while crossing the road."

23. Thereafter, the Apex Court issued certain guidelines to the Trial Courts to follow which are as follows:

"52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Code. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the defendants or respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

24. The Petitioners/Defendants have time and again wasted the time of the Trial Court as well as this Court. They have repeatedly filed applications which are almost identical in nature. Whenever they came to the High Court, they obtained stay order and at the time of hearing of the matter, in most of the occasions, the revision petition was dismissed as withdrawn. They cannot be let off lightly. Therefore, while dismissing this revision petition, exemplary costs of Rs. 50,000/- are imposed upon the Petitioner/ Defendants. This amount be deposited with the High Court Legal Services Authority within four weeks from today. If the costs are not deposited within four weeks, right of the Petitioners/Defendants to contest the suit shall stand closed.

25. I find from the record of the case that the case has been adjourned on frivolous grounds right from the day one. Therefore, I think time has come when I must fix a schedule for hearing of the case. The Plaintiffs have already produced two affidavits. They can be given at the most two more opportunities to produce their witnesses. These witnesses be examined on or before 30.09.2016 and no further date shall be given. Thereafter, the Defendants may be given three opportunities to lead evidence, which should be completed on or before 15.11.2016. The rebuttal evidence, if any, shall be led by the Plaintiffs by 30.11.2016. Thereafter, the learned Trial Court shall hear and dispose of the case latest by 31.12.2016. Parties are directed to appear before the trial Court on 22.08.2016.

26. The revision petition is dismissed in the aforesaid terms.