
(1985) 09 AHC CK 0044
In the Allahabad High Court
Case No : F.A.F.O. No. 581 of 1985

Har Krishan Khosla

APPELLANT

Vs

Alembic Chemical Works Company Ltd. and Another

RESPONDENT

Date of Decision : 11-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3, Order 38 Rule 5

Citation : AIR 1986 All 87

Hon'ble Judges : R.K. Shukla, J;N.D. Ojha, J

Bench : Division Bench

Advocate : V.K. Upadhya, for the Appellant;

Final Decision : Allowed

Judgement

N.D. Ojha, J.—This is defendant's first appeal against the order dated 13th August 1985 passed by the Civil Judge (II) Gorakhpur directing the appellant to furnish security in the sum of Rs. 7,00,000/- and to attach his properties before judgment in the event of his failure to furnish security within the time allowed.

2. The facts giving rise to this appeal are that the plaintiff-respondents instituted a suit for recovery of Rs. 7,00,000 against the appellant. They also made an application under Order 38, Rule 5 of the Civil P. C. for attaching certain properties of the appellant before judgment on the ground that he was about to dispose of his properties with intent to obstruct or delay the execution of any decree that may be passed against him. This application was contested by the appellant, but was allowed by the order appealed against.

3. It has been contended by the learned counsel for the appellant that the order passed by the trial Court is based on no evidence inasmuch as the affidavit filed in support of the application for attachment before judgment containing assertion that the appellant was about to dispose of his properties with intent to obstruct or delay the execution of the decree, was not properly sworn and was not at all an affidavit in the eye of law.

4. The respondents have put in appearance. The learned counsel for the parties are agreed that this appeal may be finally decided at this very stage. We have accordingly heard learned counsel for the parties on the merits of the appeal. It has been pointed out by the learned counsel for the appellant that an affidavit was filed in support of the application for attachment before judgment in which the crucial averment referred to above that the appellant was about to dispose of his properties in order to delay and obstruct the execution of the decree was sworn on personal knowledge by Sri Ramesh Chandra Bhargava. Thereupon an application was made on behalf of the appellant for permitting Sri Ramesh Chandra Bhargava to be cross examined inasmuch as according to the appellant, the affidavit filed by him was quite vague and contained wrong allegations. At this stage, learned counsel for the respondents wanted an opportunity for filing an additional affidavit giving detailed facts in this behalf. The permission prayed for was granted and an additional affidavit was filed, a copy whereof has been attached as Annexure 7 to the affidavit filed in this Court in support of the application for interim relief in this appeal. A perusal of that affidavit indicates that the averment made in the earlier affidavit that the appellant was after disposing of his Immovable properties intending to leave India and that he had with that end in view finally negotiated the transfer of those properties and was about to dispose of the same at the earliest, have been sworn by Sri Ramesh Chandra Bhargava on information received. The source of information however was not disclosed on the ground that the said information had been given by a person who did not wish to disclose his identity. In view of the forgoing facts it is apparent that the only affidavit in support of the application for attachment before judgment filed by Sri Ramesh Chandra Bhargava was the additional affidavit wherein the fact that the appellant was about to dispose of his properties with intent to delay or obstruct the execution of the decree had been sworn on information without disclosing the source of information. The application on which the order appealed against was passed was apparently an interlocutory application and in view of the provision contained in this behalf under Order 19, Rule 3 such an affidavit could be sworn even on the basis of belief, provided that the ground thereof had been stated. This Court has made amendment in Order 19 whereby after Rule 3, Rules 4 to 15 have been added. Rule 9 so added by this Court reads as under :

"Except in interlocutory proceedings, affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. In interlocutory proceedings, when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression "I am informed" and, if such be the case, "and verily believe it to be true", and shall state the name and address of, and sufficiently describe for the purposes of identification, the person or persons from whom he received such information. When the application or the opposition thereto rests on facts disclosed in documents or copies of documents produced from any Court of Justice or other source, the declarant shall state what is the source from which

they were produced, and his information and belief as to the truth of the facts disclosed in such documents."

5. A perusal of Rule 9 therefore, leaves no doubt that the affidavit which had been sworn in the instant case by Sri Ramesh Chandra Bhargava on the basis of information had to state the name and address and sufficiently describe the identity of the person or persons from whom he received such information.

6. In *A.K.K. Nambiar Vs. Union of India (UOI) and Another*, it was held by the Supreme Court that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In absence of proper verification, affidavits cannot be admitted in evidence.

7. In *Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others*, it was held that under Order XIX, Rule 3, of the Code of Civil Procedure, 1908, it was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particularity and in its absence the allegations in the petition, would not be supported by an affidavit as required by law.

8. In view of this legal position, the question is whether the application for attachment before judgment deserves to be dismissed on this short, ground or an opportunity deserves to be given to the respondents to file a better affidavit?

9. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, a writ petition under Art. 226 of the Constitution of India was dismissed by the High Court on the basis that the affidavit in support thereof was defective. It was held by the Supreme Court that if the affidavit was defective in any manner, the High Court, instead of dismissing the petition in limine, should have given the petitioner a reasonable opportunity to file a better affidavit which would comply with the provisions of the relevant rules in this behalf.

10. Since the order appealed against passed by the trial Court is based on an affidavit which cannot be read in evidence in view of the law laid down by the Supreme Court in the case of *A.K.K. Nambiar Vs. Union of India (UOI) and Another*, the said order cannot be sustained. It accordingly deserves to be set aside with the direction to the trial Court to decide the application for attachment before judgment afresh after giving an opportunity to the respondents to file a proper affidavit sworn in accordance with relevant rules in this behalf and giving the appellant a fresh opportunity to contest the said application.

11. Before parting with the case, we may point out that the appellant, in his rejoinder affidavit filed today, has stated in paragraph 14 that though there is no need to give any undertaking, the deponent assures that he is neither going to U. K. for settling nor he is disposing of his properties. The appellant, as identified by his counsel Sri V. K. Upadhyaya is present in this Court and he has made a statement before us that till final order is passed by the trial court on the

application for attachment before judgment, in pursuance of this order, he shall not dispose of any of his properties.

12. In the result, this appeal succeeds and is allowed. The order appealed against dated 13th Aug. 1985 is set aside and the trial Court is directed to decide the application for attachment before judgment afresh according to law and keeping in mind the above observation made above. The application shall be finally disposed of as expeditiously as possible and preferably within 2 months of the production of a certified copy of this order by either of the parties. In the circumstances of the case however, the parties shall bear their costs. A certified copy of this order may be supplied to the parties today on payment of usual charges.