
(1944) 06 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Original Order No. 270 of 1940

Jagauram Sahu and Others

APPELLANT

Vs

Chandulal Agarwala and Others

RESPONDENT

Date of Decision : 12-06-1944

Acts Referred:

Citation : (1944) 06 CAL CK 0002

Final Decision : Dismissed

Judgement

1. The Plaintiffs instituted a suit for recovery of Rs. 46,000 and odd from the Defendants. Their case in the plaint is that the Defendants are members of a joint Mitakshara trading family. Defendant No. 5 was the karta of that family but Defendant No. 1 used to manage the business of the family, that a current account was opened by the Defendants with them and the said sum represented overdrafts on the current account. This suit was filed on the 25th August, 1937. Written statements were filed on behalf of the different Defendant on the 4th April, 1938. On the 4th July, 1939, the Defendant applied to the Court for leave to deliver a number of interrogatories to the Plaintiffs. Of those interrogatories, interrogatories Nos. 7, 11 and 14 are relevant. They are printed at page 32 of the paper-book. The Court granted that application of the Defendants and directed the Plaintiffs or rather Plaintiff No. 7 to answer them by the 21st August, 1939, positively. Plaintiff No. 7 did answer those interrogatories. The answers are to be found at pages 34 and 35 of the printed record. The Defendants were not satisfied with the answer given, with the result that they applied to the Court in November, 1939, for an order directing Plaintiff No. 7 to give more specific answers to those three interrogatories. On that application the Court recorded the following order : At this stage the Court is in a difficult position to hold if the answers are sufficient. But regarding alleged loss of memory in answer to interrogatory 11, the Plaintiff No. 7 (Bhajanlal Agarwalla) is requested to brash up his memory and answer sufficiently after reference to papers. The answer to questions 7 and 14 should be more detailed if possible. These be supplied by farther answers under Order 11, rule 11, C. P. C., by the 9th December, 1939.

On the 9th December, 1939, Plaintiff No. 7 prayed for time to file answers. His request was granted and he was required to answer further on the 20th December, 1939. On the 20th December, 1939, Plaintiff No. 7 stated that the Plaintiffs will be seriously prejudiced if he is to give more detailed answers at that stage. After that, the Defendants took no further steps. Nearly a year after, that is to say, on the 12th November, 1940, the Defendants made an application under Or. 11, r. 21, C. P. C., for dismissal of the suit on the ground that Plaintiff No. 7 had not sufficiently answered the said interrogatories, namely, Nos. 7, 11 and 14. This application was refused. In refusing the application for dismissal of the suit, the learned Subordinate Judge observed that he was not in full possession of all the evidence which would enable him to come to the conclusion that the Plaintiffs had deliberately withheld answering all these interrogatories in full. On that view of the matter, he did not, think it proper at that stage to dismiss the suit in limine. The dismissal of the suit or striking out of the defence under Or. 11, r. 21, C. P. C., is a drastic remedy. The power given to the Court under that section ought to be sparingly used and used only in exceptional circumstances. Having regard to the nature of the interrogatories and the nature of the answers furnished therein, we think that it is not a fit case in which the Court ought to exercise those powers and dismiss the suit. It is on this ground that we dismiss this appeal.

2. It would be open to the Defendants to make such comments as they think proper at the time when the case is heard on the answers to interrogatories Nos. 7, 11 and 14 given by the Plaintiff No. 7 and the explanation given by him for not supplementing those answers.

3. This is our decision on the merits. A preliminary objection was taken by the Respondents' Advocate about the competency of this appeal. His contention is that, though an order dismissing a suit or striking out the defence under Or. 11, r. 21, C. P. C., is appealable, an order to the contrary is not so. We do not consider the preliminary objection to be sound. The decision in the case of Jnanada Prasad Mukherjee v. G.M. Falkner 34 C. W. N. 220 (1928) is a complete answer to that objection.

4. Parties would bear their own costs in this appeal.

5. Let the records be sent down to the lower Court without delay. No order is necessary on the application.