
(2018) 02 MP CK 0243
In the Madhya Pradesh High Court
Case No : 1132 of 2017

Jagdeesh

APPELLANT

Vs

Narayan and another

RESPONDENT

Date of Decision : 22-02-2018

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, Section 151,
Section 96

Citation : (2018) 02 MP CK 0243

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Satyam Agrawal, A.K. Jain

Final Decision : Dismissed

Judgement

1. The interesting question involved in this petition filed under Article 227 of the Constitution is : whether against the order dated 14.12.2015, an

application under Order 9 Rule 9 read with Section 151 of Code of Civil Procedure was maintainable and whether the Court below in MCA

No.07/2017 has rightly passed the order dated 10.11.2017 ?

2. Shri Satyam Agrawal, learned counsel for the petitioner/defendant submits that the plaintiffs did not pay the requisite Court fees. For this singular

reason, by order dated 14.12.2015, the suit was held to be not maintainable and was accordingly dismissed. The plaintiffs aggrieved by this order

filed an application under Order 9 Rule 9 CPC read with Section 151 CPC for restoration of the civil suit and not for recalling the order dated

14.12.2015. The said application of plaintiffs was rejected by order dated 12.01.2017. Aggrieved, the plaintiff filed MCA No.07/2017 under

Order 43 Rule 1(c) CPC. This MCA was allowed by Court below by impugned order dated 10.11.2017.

3. Learned counsel for the petitioner contended that when petitioner has an alternative remedy of filing appeal against the basic order dated

14.12.2015, the inherent powers flowing from Section 151 CPC could not have been invoked. In addition, the plaintiffs had also an option to file a

fresh suit. In other words, it is submitted that when a specific statutory remedy is available to the plaintiffs, the inherent power under Section 151

CPC could not have been invoked by the Court below. In support of his contention, Shri Satyam Agrawal placed reliance on AIR 1961 SC 218

(Padam Sen vs. State of UP) and AIR 1962 SC 527 (Manohar Lal Chopra vs. Seth Hiralal).

4. Per contra, Shri A.K. Jain, learned counsel for the plaintiffs submits that a plain reading of Order 9 Rule 8 CPC shows that in absence of

plaintiffs, the suit can be dismissed. The basis order dated 14.12.2015 shows that plaintiffs were absent on the said date. Thus, practically, the

order dated 14.12.2015 should be treated as an order passed under Order 9 Rule 8 CPC and, therefore, plaintiffs have rightly filed an application

under Order 9 Rule 9 read with Section 151 CPC. By placing reliance on AIR 1974 Allahabad 275 (Abdul Rashid Vs. Shri Sitaram Ji B.

Maharaj Brajman and others) and AIR 1991 Kerla 185 (C.V. Varghese and another Vs. Devi Academy and others), Shri Jain contended that the

remedy availed by the plaintiffs was an appropriate remedy and the impugned order was rightly passed by the Court below. In support of

contention that a dismissal of suit because of absence of plaintiffs is covered under Order 9 Rule 8 CPC, Shri Jain placed reliance on the judgment

passed in AIR 1994 Allahabad 151 (M/s. Guru Prasad Shyam Babu and others Vs. State Bank of India and another).

5. Lastly, Shri Jain further contended that a plain reading of language employed in Order 7 Rule 11 CPC shows that it talks about rejection of

plaint and not about dismissal of the suit. If plaint would have been rejected on a preliminary point, decree would have been drawn and in that

event, the plaintiffs would have got an opportunity to file an appeal under Section 96 of CPC. In the present case, the plaint was not rejected. The

only flaw or deficiency was regarding the Court fees. Rest of the proceedings were almost over. This deficiency can be cured by putting the clock

back by permitting the plaintiffs to cure the said defect and it would not be in the interest of justice to throw the plaintiff to the wind and compel him

to undergo the procedural rigmarole of appeal etc. In alternatively, Shri Jain contended that if this Court is not satisfied with his first part of his

contention, liberty may be reserved to avail the appropriate remedy and for that purpose, the delay may be condoned.

6. No other point is pressed by learned counsel for the parties.

7. I have heard learned counsel for the parties and perused the record.

8. This is trite law that inherent power conferred by Section 151 CPC cannot be exercised when its exercise may be in conflict with any express

provision provided in the Code or against the intention of the Legislature. The Apex Court reiterated this view in the case of Manohar Lal Chopra

(supra). Thus, in the present case, it is required to be considered whether any express provision is coming in the way of the respondents. In the

instant case, the respondents have not chosen to avail the remedy of appeal to a higher court against an order rejecting a plaint for non-payment of

court fees. There is no express provision in the CPC for redressal of this nature of court fees before the very same court. Thus, if application is

filed under Section 151 CPC for restoration of suit, it cannot be treated to be an attempt to supplant the statutory provision of appeal. I am

fortified in my view by a Full Bench judgment of Orissa High Court reported in AIR 1980 Orissa 162 (E.I.D. Parri Ltd. vs. Agro Sales &

Services). The similar view was taken by Madhya Pradesh High Court in 2000 (1) MPWN 124. (Ajab Singh vs. Amar Singh). This Court

followed the Division Bench judgment of Orissa High Court in the case of Padmalaya Panda vs. Masinaath Mohanty reported in AIR 1990 Orissa

102. This Court came to hold that application under Section 151 for restoration of suit is maintainable, even though rejection of plaint amounts to a

decree which is appealable. It was further held that Section 151 is available to get the suit restored which was rejected for non-payment of court

fees. This principle is recently followed by this Court. in 2016 (1) MPLJ 358 (Pravesh Pathak and others vs. Shakuntala Sharma and others). In

this view of the matter, I find no jurisdictional error in the order impugned which warrants interference by this Court.

9. In view of aforesaid analysis, the other contentions raised by Shri A.K. Jain

pails into insignificance. In absence of any jurisdictional error, procedural impropriety or palpable perversity, interference is declined. Petition is dismissed.