

(1989) 01 AHC CK 0026
In the Allahabad High Court
Case No : Civil Revision No. 1 of 1989

Jayshree Distribution Piplani Katra and Others APPELLANT
Vs
Jayshree Tyres and Rubber Products and Another RESPONDENT

Date of Decision : 18-01-1989

Acts Referred:

Arbitration Act, 1940 — Section 17
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 115

Citation : (1989) 1 AWC 478

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : U.K. Pandey, for the Appellant; Sudhir Chandra Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Singh, J.—This is a Defendants' revision against the order of the learned Civil Judge imposing certain conditions while allowing their application under Order 9 Rule 13 Code of Civil Procedure.

2. The Plaintiff-opposite party No. 1 Jayshree Tyres & Rubber Products carries on the business of manufacture and sale of cycle, rickshaw tyres and tubes. The Plaintiff supplied tyres and tubes to the Defendant-applicants from time to time and an amount of Rs. 9 lacs and odd became due.

3. By means of different letters the Defendants have admitted the claim of the Plaintiff so far as the principal amount is concerned but the rate of interest was disputed.

4. Ultimately the matter was referred to the Arbitrator as mutually agreed upon between the parties on 9-6-1986. The Arbitrator gave an award on 30-8-1986 holding that the Plaintiff was entitled for a sum of Rs. 9,09,926.26 paisa as principal. Interest at the rate of 18% per annum shall be paid on the same from 15-2-1986 to the date of reference i.e. 26th June, 1986. This award was in the

knowledge of the Defendants but the same has not been challenged.

5. On 19-12-1987 by the order of Civil Judge the award was made rule of the Court u/s 17 of the Arbitration Act. Thereafter the execution proceeded.

6. On 1-8-1988 the Defendants moved an application under Order 9 Rule 13 CPC for setting aside the order dated 19-12-1987. The Plaintiff filed an objection. The Court allowed the said application imposing conditions that the Defendants would furnish bank guarantee of 50% of the decretal amount within 15 days from the date of passing of the order alongwith Rs. 250/- as costs. Against this part of the order the present revision has been filed.

7. Heard Sri. Rajeshwari Prasad, learned Counsel for the applicants and Sri. Sudhir Chandra learned Counsel for the opposite parties.

8. The first contention of the learned Counsel for the applicant was that since the Court was satisfied that summons were not properly served, there was no necessity for imposing any condition regarding furnishing of the bank guarantee. In support of his contention he has relied upon Raj Kumar Soni Vs. Mohan Meakin Breweries Ltd., . The facts of that case were that the trial Court while setting aside the exparte decree had passed an order to deposit Rs. 2 lacs in cash within 60 days from the date of the order, against which the revision was filed. It was held that-

Where the Court set aside ex-parte decree on a clear finding that the Defendant had sufficient cause for being absent on the day the exparte decree was passed, as he was not informed of the date fixed for hearing, imposition of condition that the Defendant should deposit 1/5th of the amount claimed in suit (Rs. 2 lacs) within 60 days for setting aside the exparte decree was improper.

Unless the party is at fault normally no condition should be imposed for payment of money or furnishing of security while setting aside the exparte decree. The Court can always award costs to compensate the other side for inconvenience and loss caused to the said party. Where the Court finds that the Defendant is at fault or there was omission on his part or it was because of his act that there had been delay in the disposal of the case, the Court may impose reasonable terms. An order directing the party to deposit 1/5th of the decretal amount is not justified when the amount claimed in the suit is large one. There are other modes of safeguarding the interest of the Plaintiff. If the Court finds that the Defendant is disposing of his properties or moving away from the jurisdiction of the Court or has been delaying the proceedings in the suit, the Court would be justified in imposing the terms for the payment of money into Court or furnishing of security, and if need be for the entire amount claimed in the suit.

9. Another case relied upon by him is Chhagan Raj v. Suman Mai AIR 1958 Raj 237 which is very much similar to the case of Raj Kumar Soni (supra). It has been clearly laid down in the cases of Raj Kumar Soni and Chhagan Raj that it is not open to the Court at any time to impose onerous terms but the Court would

be justified in imposing terms for payment of money into Court or furnishing of security and if need be, for the entire amount claimed in the suit.

10. The facts of the instant case are entirely different and both the cases referred to above are wholly inapplicable because in both of them the Court had directed to deposit huge amount in cash whereas in the present case only an order for furnishing bank guarantee has been passed in view of admitted liability of at least Rs. 7,10,000/- and odd. In the instant case the Court while setting aside the *ex parte* decree dated 19-12-1988 on 20-12-1988 has directed the Defendant to furnish only a bank guarantee of 50% of the decretal amount within 15 days from the date of the passing of the order along with Rs. 350/- as costs. There is no order to deposit any amount in cash. The order can not be said to be onerous in any way.

11. Order 9 Rule 13 CPC gives a power to the Court to set aside *ex parte* decree if the Court was satisfied that the summons were not duly served or that the Defendant was prevented by any sufficient cause from appearing when the suit was called for hearing. The Court is further empowered to pass this order on such terms and conditions as to payment of cost into Court or otherwise as it thinks fit.

12. The word "otherwise" would indicate that it was open to the Court to direct furnishing of security or make any such order. The words "as it thinks fit" permit the Court to pass any such order as to payment of cost or payment of money into Court or furnishing of security etc.

13. The learned Counsel for the applicant has admitted before me in Court that a total sum of Rs. 7,10,000/- was due. He prayed for some time to deposit this amount but subsequently this offer was withdrawn for reasons best known to the Defendants. Under these circumstances, in my opinion, the Court below has taken a lenient view of the matter by passing only an order for furnishing bank guarantee. The Court has to do substantial justice between the parties and technicalities should be avoided as far as possible.

14. I am of the view that the Court had jurisdiction to pass such an order. The contention of the learned Counsel for the applicant that it was an arbitrary order is also unfounded. Moreover the question of arbitrariness cannot be gone into by the revisional Court because it needs investigation of facts.

15. The High Court while sitting in revisional jurisdiction u/s 115 CPC has got its own limitations.

16. It has been held by the Supreme Court in *Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav*, :

The High Court cannot while exercising its jurisdiction u/s 115, correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate Court has exercised a jurisdiction

not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly involved. Points of law may arise which are related to questions of jurisdiction. A plea of limitation or a plea of res-judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party which raises them would oust the jurisdiction of the Court. An erroneous decision on these pleas, therefore, can be said to be concerned with questions of jurisdiction falling within the purview of Section 115 of the Code. But an erroneous decision on a question of law having no relation to questions of jurisdiction will not be corrected by the High Court u/s 115.

17. The Supreme Court had an occasion to consider the matter again in the case of Manick Chandra Nandy Vs. Debdas Nandy and Others, wherein it has been held-

The exercise of revisional jurisdiction is confined to questions of jurisdiction. While in a first appeal the Court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to re-examine or re-assess the evidence on record and substitute its own findings on facts for those of the subordinate Court.

In a very recent decision of this Court in State of U.P. v. III Additional District Judge, Azamgarh 1988 AWC 1433 the same view has been followed.

18. The impugned order was passed on 20-12-1988 and the Court had given only 15 days time to comply with the order but nothing has been done till today. That shows the intention of the Defendants not to pay any amount to the Plaintiff.

19. In my opinion the order does not suffer from any inherent want of jurisdiction or any illegal exercise of jurisdiction

20. The revision is dismissed with costs.