

(1989) 08 MP CK 0058

In the Madhya Pradesh High Court

Case No : Civil Revision No. 221 of 1989

Kanhaiyalal Patni

APPELLANT

Vs

Awantika Pustak Bhandar and Another

RESPONDENT

Date of Decision : 29-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3(5), 115

Citation : AIR 1990 MP 207 : (1989) MPLJ 787

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : G.K. Patni, for the Appellant;

Final Decision : Dismissed

Judgement

K.L. Shrivastava, J.

This revision petition u/s 115 of the C.P.C. 1908 (for short "the Code") is directed against the order dated 4-8-89 passed by the 3rd Addl. Judge to the District Judge Indore in the summary suit No. 113-B/68.

Circumstances giving rise to the revision petition are these. The petitioner has instituted the said summary suit under Order 37 Rule 2 of the Code against the non-applicants.

After the N.As. put in appearance the petitioner served on them summons for judgment as provided under Sub-rule (4) of Rule 3 of Order 37. The N.As. within the time of ten days filed their written submission praying for leave to defend.

The contention of the petitioner was that the written submission constitutes written statement and it cannot be construed as an application for leave to defend. Thereon, leave conditional or otherwise could not be granted and the petitioner was entitled to judgment forthwith as provided in Sub-rule (6) of Rule 3 of Order 37 of the Code.

The contention of the N.As. was that in the written submission leave to defend is

expressly prayed for and the petitioner is not entitled to judgment forthwith.

The learned Judge of the lower Court negating the applicant's aforesaid contention has treated the written submission as application for leave to defend the suit and on the basis of affidavits, finding that triable issues have been raised therein, has granted the leave prayed for. In view of the fact that the signatures and execution of documents were denied in the written submission, he has further declined to direct the non-applicants to give security as a pre-condition for grant of the leave to defend the suit.

The point for consideration is whether the revision petition deserves to be admitted.

From a perusal of the provision in Order 37 Rule 3(5) it is clear that on an application for leave to defend, the same may be granted conditional or upon such terms as may appear to the court to be just. According to the provision leave to defend shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious.

A perusal of the written submission shows that it has been titled as an application for leave to defend though it contains para-wise reply to the plaint allegations.

Procedure is the handmaid of justice and should not be so construed so as to defeat it. The fact that the written submission expressly praying for leave to defend the suit embodied more details than the requirements of an application for such leave cannot be permitted to be urged as depriving it of its character as such an application.

Care must always be taken to ensure that technicalities are not made the stumbling blocks on the road in justice.

A perusal of the written submission further shows that the trial Court's view that triable issues have been raised therein is correct and in the circumstances of the case no exemption can be taken to the order impugned.

It may be pointed out that the jurisdiction u/s 115 of the Code is a discretionary one. It is limited in scope and covers only jurisdictional errors. Further restrictions have also been placed in the exercise of this discretionary jurisdiction and even where the conditions for the exercise of the revisional jurisdiction are fulfilled the court in exercise of its discretion in a judicial manner may still refuse to interfere. In this connection reference may be made to the decision in *Major S.S. Khanna Vs. Brig. F.J. Dillon*, wherein it has been observed as under:-

"That is not to say that the High Court is obliged to exercise its jurisdiction when a case is decided by a subordinate court and the conditions in Clause (a)(b) or (c) are satisfied. Exercise of the jurisdiction is discretionary : the High Court is

not bound to interfere merely because the conditions are satisfied. The interlocutory character of the order, the existence of another remedy, to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding or by a suit and the general equities of the case being served by the order made are all matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract the jurisdiction exist, should exercise its jurisdiction."

The following observations in paragraph 8 of the decision in Pirbux Vs. Babulal, may also be usefully reproduced:-

"While exercising its discretion High Court can take into consideration such circumstances and facts as may disentitle the petitioner in a revision petition from being granted any relief. One of such relevant circumstances would be whether the order sought to be revised has occasioned a failure of justice. Section 115, it is plain, vests the High Court with a discretionary power to be exercised judicially to interfere only when the cause of justice demands it. The High Court is not bound to interfere merely because the conditions of Section 115 are satisfied. Interference in revision is purely discretionary and even if the lower Court has acted without jurisdiction or acted illegally in the exercise of jurisdiction, the High Court will not interfere unless grave injustice or hardship would result from failure to do so."

As a result of the foregoing discussion I find that the impugned order does not call for interference in exercise of this Court's revisional jurisdiction u/s 115 of the Code. It is, therefore, summarily dismissed and so also the application for stay.