

(2007) 05 KAR CK 0003

In the Karnataka High Court

Case No : Regular First Appeal No. 2155 of 2006

Karnataka Small Industries Marketing Corporation Ltd.

APPELLANT

Vs

Padma Textiles

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 8 Rule 5

Citation : AIR 2007 Kar 172 : (2007) ILR (Kar) 2844 : (2007) 6 KarLJ 280 : (2007) 4 KCCR 2140

Hon'ble Judges : S.R. Bannurmath, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : M.B. Kanavi, for the Appellant; Sundarswamy Ramdas and Anand, for the Respondent

Judgement

S.R. Bannurmath, J.—Though the matter is posted for admission, since the scope of enquiry is very limited, with the consent of both the learned Counsel, the same is taken up for disposal.

2. This is a defendant's appeal challenging the decree dated 14.7.2006 passed in O.S. No. 1421/2003 decreeing the suit of the respondent/plaintiff.

3. The respondent/plaintiff has filed a suit for recovery of a sum of Rs. 4,39,583/- along with interest. The trial Court has decreed the suit only on the ground that the defendant has not filed his written statement in view of Order VIII Rule 5CPC. It is to be noted that having regard to the provisions of Order XII Rule 6, Order V Rule 8 and Order VIII Rule 10 of CPC, the Court cannot act blindly even if written statement is not filed as observed by the Hon'ble Supreme Court in the case of Salem Advocate Bar Association, Tamilnadu v. Union of India ILR 2005 KAR 4555. The provisions of Order VIII Rule 5 of CPC is a directory provision and not mandatory. In a case where written statement is not filed, the Court should be cautious in proceeding under Order VIII of CPC before passing the judgment against the defendant and it must see that even if the facts set out in the plaint are treated as having been admitted, whether it is possible to pass

the judgment in favour of the plaintiff. It is subjective satisfaction of the Court and not blind discretion. The trial Court in the present case without satisfying itself has simply decreed the suit holding as follows:

I have gone through the plaint averments and the documents and the affidavit evidence of the plaintiff. By accepting the plaint averments and the documents, the suit deserves to be decreed against the defendant

4. In our view, this is not "subjective satisfaction" which is required to be exercised by the Court below. Hence on this ground, the appeal deserves to be allowed and the matter has to be remanded to the Court below.

5. However, it is to be noted that the defendant has not filed the written statement in time in the trial Court and even it has not been produced before this Court in this appeal. As such in the light of the observations made by the Hon'ble Supreme Court in Salem Advocate Bar Association, Tamilnadu's Case, while remanding the matter to the Court below, we hold that it is open to the appellant/defendant to file written statement at the earliest subject to the satisfaction of the trial Court as to the reasons, assigned for the belated approach.

6. Taking note of the fact that the plaintiff has filed suit for recovery and some amount is practically admitted by the defendant, we direct the appellant/defendant to deposit a sum of Rs. 2,00,000/- within four weeks from today in the Court below. The trial Court is directed to keep the amount in deposit in a nationalised Bank till the disposal of the suit.

7. For the reasons stated above, this appeal is partly allowed and the impugned order is set aside and the matter stands remitted to the trial Court for fresh disposal. For the convenience of the parties, it is directed that both the parties shall appear before the Court on 12.6.2007 on which day the trial Court shall fix its own dates for further trial. There shall be no order for costs.