
(1991) 01 PAT CK 0001

In the Patna High Court

Case No : Civil Revision No. 48 of 1990 (R)

Keshav Prasad Singh

APPELLANT

Vs

Dinkar Ratilal

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Evidence Act, 1872 — Section 63, 65

Citation : (1993) 2 BLJR 965

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against the order dated 4-1-1990 passed by Sri A. K. Pandey, 2nd Additional Munsif, Jamshedpur in Eviction Suit No. 208 of 1986 whereby and whereunder the said learned court in purported exercise of its power conferred upon him under Order XII, Rule 2 of the Code of Civil Procedure, directed issuance of notice upon the defendant on the basis of an application filed by the plaintiff Opposite party, dated 8-11-89 as contained in Annexure 1-A of the Civil Revision Application.

2. It appears that by reason of the said application the Opp-party brought it to the notice of the court that the counsel of the defendant was given a notice in terms of Order XII; Rule 1 of the CPC as to whether the Xeroxed copy of the M.O. forms which were already on record and the original thereof were addressed on behalf of the defendant and the foot note appearing in the M.O. were in the writing of defendant's brother or not.

3. The petitioner filed a rejoinder to the said application as contained in Annexure-2 to the Civil revision application wherein inter alia it was stated that the money order forms were manufactured one and thus the said documents were not in custody of the defendant.

4. The defendant further denied his signature on the said money order coupons.

5. By reason of the impugned order dated 4-1-90, as noticed hereinbefore, the learned court below allowed the aforementioned application filed on behalf of the defendant opposite-party.

6. Mr. M.Y. Iqbal, learned Counsel appearing on behalf of the petitioner submitted that the impugned order is vitiated in law inasmuch as Order XII, Rule 2 of the CPC does not contemplate passing of any order by the court. The learned Counsel further submitted that in any event as by reason of Annexure-1 to the civil revision application the petitioner was asked to admit xeroxed copies of the money order coupon which being inadmissible in evidence, the learned court below could not have passed the impugned order.

7. Mr. B.B. Sinha, the learned Counsel appearing on behalf of the Opposite-party, on the other hand, submitted that the learned court below in effect and substance has exercised its jurisdiction conferred upon him under Order XII, Rule 3A of the Code of Civil Procedure. The learned Counsel further submitted that the xeroxed copies of the said documents are admissible in the evidence, in view of provisions contained in Sections 63 and 65 of the Evidence Act.

8. Order XII, Rule 2 and Rule 3-A read as follows;

Rule 2.-"Either party may call upon the other party (to admit, within fifteen days from the date of service of the notice any document) saving all just exceptions ; and in case of refusal or neglect to admit, after such notice, the; cost of proving any such document shall be paid by the party so neglecting or refusing whatever the result of the suit may be, unless the court otherwise directs ; and no costs of proving any documents shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the court, a saving of expense.

Rule 3-A."Notwithstanding that no notice to admit documents has been given under Rule 2, the court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such documents.

9. From the persual of the aforementioned Order XII, Rule 2 and Order XII, Rule 3 (A) it is evident that the said provisions operate in different situation. However, Order XII, Rule 3 (A) contemplates that the court may exercise its power despite the fact that no notice under Order XII, Rule 2 of the CPC had been issued, under the said provision, the court can exercise its power at any stage of the proceeding. The power conferred upon the court under Order XII, Rule 3 (A) of the CPC is a wide one.

10. It is true as has been contended by Mr. M.Y. Eqbal that the court has sought to exercise its power purported to be under Order XII, Rule 2 of the Code of Civil Procedure, but in my opinion, the labelling of the Section on the application filed on behalf of the plaintiff opposite-party on the basis whereof the impugned order has been passed is wholly irrelevant. It is now well known that if the court has

power to pass an order under the provisions of any statute, the order passed by him shall not stand vitiated only by reason of the fact that wrong provisions of law has been mentioned either in the said order or in the application in terms whereof the said order has been passed.

11. In view of the provisions contained in Order XII, Rule 3-A of the Code of Civil Procedure, in my opinion, the impugned order cannot be said to be vitiated in law.

12. So far as the second contention raised by Mr. Eqbal to the effect that the xeroxed copies are not admissible in evidence, in my opinion, the question as to whether the plaintiffs are entitled to bring those documents on record of the suit by the way of secondary evidence or not would fall for consideration by the learned court below.

13. In this view of the matter, in my opinion, the learned court below cannot be said to have acted illegality in passing the impugned order. Further from Annexure-2 to the civil revision application, it is evident that the petitioner has already denied the custody of the said documents and further contended that the same are manufactured ones.

14. In this situation, the defendant is merely required to . answer the notice on oath so that the plaintiff-petitioner may not have to prove the said documents in terms of Order XII, Rule 3 of the Code of Civil Procedure.

15. It is further clear that the petitioner has not been prejudiced in any manner whatsoever by reason of the impugned order inasmuch as in compliance thereof he has only answer the questions on oath failing .which-it would be open to the plaintiff to take recourse to the provisions of Order XII, Rule 2 of the Code of Civil Procedure.

16. Taking into consideration, thus all facts and circumstances of this case, I do not find any merit in this application Which is accordingly dismissed.

However, in the facts and circumstances, there will be no order as to costs.