

(1994) 07 GUJ CK 0009

In the Gujarat High Court

Case No : Civil Revision Application No. 203 of 91

Keshavlal Durlabhasinbhai's firm and Another

APPELLANT

Vs

Shri Jalaram Pulse Mills

RESPONDENT

Date of Decision : 27-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 10 Rule 3, Order 10 Rule 4, Order 14 Rule 1, Order 14 Rule 1(5)

Citation : AIR 1995 Guj 166

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Advocate : A.K. Padia, for the Appellant; M.C. Shah, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Mehta, J.—The original defendant had challenged the order of the trial court directing the defendant to lead the evidence first.

2. The plaintiff, by an application Ex. 24, submitted that the defendant had admitted that the defendant had received delivery of the goods of the plaintiff and part payments were made from time to time and in respect of the balance payment, the defendant had given two cheques. However, those cheques came to be dishonoured. It was also submitted that the defendant had also stated that thereafter certain payments amounting to Rs. 5000/- have been made. It was, therefore, submitted that the onus to prove the defence was on the defendant and, therefore, the defendant should be asked to lead the evidence first.

3. The trial court granted that application and directed the defendant to lead the evidence first.

4. At the hearing of this revision application, the learned counsel for the petitioner-defendant submitted that the defendant has wholly denied the claim of the plaintiff and, therefore, the initial burden is on the plaintiff. It is also submitted that the defendant had also denied and not admitted that the plaintiff

was a registered partnership firm.

5. The plaintiff has in the plaint itself stated that the plaintiff partnership firm is a registered partnership firm and the registration number is also given.

6. The learned counsel for the petitioner defendant also submitted that the defendant and his advocate could not remain present at the hearing of Ex. 24 on account of disturbed condition and curfew and, therefore, the trial court ought not to have heard the matter ex parte and passed the order.

7. In view of the fact that the plaintiff's claim is substantially admitted and the plaintiff-firm is also prima facie shown to be a registered firm, the trial court has rightly directed the defendant to lead the evidence first. The trial Court is entitled even to record the statements of the parties before framing issues under Order XIV, Rule 1 read with Order X, Rule 2. The provisions of Order 10, Rules 2, 3 and 4 and Order XIV, Rule 1(5) read as follows :--

Rule 2, Order 10. Oral examination of party, or companion of party -- (1) At the first hearing of the suit, the court-

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such part or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

Rule 3 : Substance of examination to be written -- The substance of the examination shall be reduced to writing by the Judge and shall form part of the record.

Rule 4 : Consequence of refusal or inability of pleader to answer -

(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in Rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him or make such order

in relation to the suit as it thinks fit.

Xxxxx

Order IV, Rule 1(5):

At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and (after examination under Rule 2 of Order X and after hearing the parties or their pleaders), ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend."

8. These provisions enable the trial Court to narrow down the controversy and focus the attention of the parties to the barest minimum. In large number of cases, the matters would be expeditiously disposed of. This is a very salutary provision for expeditious disposal of suits and it should ordinarily be resorted to and followed, by all trial courts.

9. In the present case, though this procedure is not followed and though the stage of framing of issues has passed, the trial court has on correct appreciation the rival contentions of the parties come to a proper conclusion that the defendant should lead the evidence first. This order is perfectly legal and proper and no interference is called for on any of the grounds canvassed by the learned advocate for the petitioner. Though the defendant has chosen to deny the claim of the plaintiff in totality, that is a denial without any substance in view of the other admitted facts of receipt of goods, part payments, issuance of cheques and a claim of having made further payments and, therefore, onus lies on the defendant. The denial of registration of partnership is also prima facie frivolous. The plaintiff has given the registration number of the partnership firm of the plaintiff.

10. In view of all these, there is no case for any interference in this revision application u/s 115 of the Civil Procedure Code. There is no failure of justice. Hence, this revision application is dismissed with costs. Notice discharged. Interim relief vacated. The trial Court to proceed with the suit expeditiously since it is by now ten years old.