
(2010) 08 AHC CK 0116
In the Allahabad High Court
Case No : Civil Revision No. 117 of 2004

Magnoo Jha

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7, 11

Citation : (2010) 08 AHC CK 0116

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Judgement

Anil Kumar, J.—Heard Sri Pritish Kumar, learned Counsel for the revisionist, Ajay Kumar Sharma holding brief of Sri Amit Chandra, learned Counsel for the respondents on behalf of respondent No. 1 and perused the record.

2. By means of present revision, the revisionist challenged the order dated 15.07.2004 passed by the Additional Civil Judge III (Senior Division), Lucknow in Regular Suit No. 326 of 2000 Punjab National Bank v. Magnoo Jha by which the revisionist-defendant application (numbered as C-47) Order IX Rule 7 CPC has been rejected.

3. Sri Pritish Kumar, learned Counsel for the revisionist while assailing the said order submits that the Punjab National Bank-plaintiff-respondent No. 1 has initially filed a Suit for recovery of a sum of Rs. 51,37,795.99/- registered as Regular Suit No. 326 of 2000 Punjab National Bank v. Magnoo Jha before the Civil Judge (Senior Division), Lucknow and now the same has been transferred to the court of Additional Civil Judge III (Senior Division), Lucknow which is pending. In the said Suit revisionist was impleaded as defendant No. 1.

4. Learned Counsel for the revisionist further submits that in the said Suit, an application has been moved by the revisionist-defendant under Order IX Rule 7 CPC which was numbered as (application No. C-47) and the same has been rejected by the court below solely on the ground taking into consideration the

law as laid down in the case of Prahlad Singh v. Niyaz Ahmad and Ors. 2000 AWC 1721.

5. He further submits that the said action on the part of the court below thereby rejecting the application on the basis of the judgment as given in the case i.e. Prahlad Singh v. Niyaz Ahmad and Ors. 2000 AWC 1721 is not correct in view of the reasoning given in the judgment passed by this Court in the case of Jagardeo and Ors. v. Mohan Lal and Anr. 2005 (23) LCD 1137 Accordingly, the order which is under challenge is liable to be set aside.

6. On the other hand, Sri Ajay Kumar Sharma appearing on behalf of respondent No. 1 submits that the order which is under challenge in the present revision, does not suffer from any illegality or infirmity and the same is in accordance with law passed by the court below after taking into consideration the law as laid down by this Court in the case of Prahlad Singh v. Niyaz Ahmad and Ors. 2000 AWC 1721, as such the present revision filed by the the revisionist is liable to be dismissed.

7. I have heard learned Counsel for the parties and perused the record.

8. So far as, the controversy which is involved in the present case is decided on the basis of the law as laid down in the case of Prahlad Singh v. Niyaz Ahmad and Ors. 2000 AWC 1721, however, subsequently the same has been considered in the case of Jagardeo and Ors. v. Mohan Lal and Anr. 2005 (23) LCD 1137 in which this Court held as under:

4. It has been held by the Supreme Court in Arjun Singh Vs. Mohindra Kumar and Others, that firstly, an application for setting aside the order directing the Suit to proceed ex parte can be filed until judgment is pronounced or reserved and secondly, even without setting aside the order directing the suit to proceed ex parte, defendants are entitled to participate in the proceedings from the stage when they appear in the suit. Order 9 Rule 7 CPC deals with the power of the court to set aside order directing the suit to proceed ex parte. Order 9 Rule 7 CPC is quoted below:

When the court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

5. Learned Counsel for contesting respondent No. 1 has cited an authority of this Court reported in Prahlad Singh v. Niyaz Ahmad and Ors. 2000 AWC 1721 to contend that application under Order 9 Rule 7 CPC can be filed only on the next date which is fixed on the date when order directing the suit to proceed also. In the said authority of Prahlad Singh application under Order 9 Rule 7 CPC was filed after conclusion of the evidence. It was filed on the date fixed for arguments. In the authority of Prahlad Singh it was also observed that similar

application under Order 9 Rule 7 CPC had earlier been rejected on merit hence subsequent application under the same provision was barred by Section 11 CPC (res-judicata).

6. The view that application under Order 9 Rule 7 CPC can be filed only on the date fixed while directing the suit to proceed ex parte and not afterwards taken in the aforesaid authority of Prahlad Singh is neither in consonance with Order 9 Rule 7 CPC which nowhere places such restriction nor with the judgments of the Supreme Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, and Arjun Singh's case(Supra).The only restriction is that the application shall be filed before the conclusion of the hearing. The said view is directly in conflict with Division Bench of this Court reported in Bhagwat Prasad v. Muhammad Shibli AIR 1922 All 110 the relevant portion of which is quoted below:

Bhagwat prasad did not appear and the court recorded an order directing that the case should be heard against him ex parte. The case however was not heard on that date, and the hearing was postponed to a subsequent date. On that date, Bhagwat Prasad appeared and asked for an adjournment to enable him to file his written statement and to put forward his defence, and to adduce his evidence. This application was refused, but the case was for some reason adjourned to another date.

On that date Bhagwat Prasad again appeared and asked the Court to permit him to file his written statement; and he stated that his witnesses were present in Court and he was ready to adduce his evidence. The Court refused to listen to him and to receive his written statement, on the ground that on the first date fixed for hearing he was not present and the Court and ordered proceedings to be held ex parte again him.

This view of the court of first instance was clearly erroneous and strangely enough it was accepted by the lower appellate Court.

7. I am therefore of the view that as evidence has not yet commenced hence it will be in the interest of justice to permit the petitioner to file the written statement and participate in the proceedings on payment of heavy cost.

9. For the foregoing reasons, the controversy which is involved in the present case, it is squarely covered by the judgment and order passed by this Court in the case of Jagardeo and Ors. v. Mohan Lal and Anr. (Supra) so the impugned order which is under challenge is liable to be set aside.

10. Accordingly, the order dated 5.07.2004 passed by the Additional Civil Judge III (Senior Division), Lucknow in Regular Suit No. 326 of 2000 Punjab National Bank v. Magnoo Jha is set aside.

11. Court below is directed to proceed accordingly.