
(2006) 12 AHC CK 0025
In the Allahabad High Court
Case No : C.M.W.P. No. 53593 of 2002

Mahendra Kumar

APPELLANT

Vs

Judge, Small Causes Court/Civil Judge, (Junior Division) and
Others

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 11, 9
Civil Procedure Code, 1908 (CPC) — Section 34, 35A, 35B
Constitution of India, 1950 — Article 220, 226
Transfer of Property Act, 1882 — Section 106

Citation : (2007) 5 AWC 4526

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Atul Kumar, for the Appellant; M.A. Qadeer, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The Petitioner has filed this writ petition praying for a writ of certiorari quashing the impugned order dated 9.10.2002, passed by the Judge, Small Cause Court/Civil Judge (Junior Division), Budaun in S.C.C. Suit No. 23 of 1994, Radhey Shyam v. Suresh Chandra and Ors. S.C.C. Suit No. 23 of 1994, rejecting his Application No. 173C for accepting the dues with costs.

3. The facts of the case in brief are that the father of the Petitioner and Respondents 3 to 7 and 9 was the tenant of the shop in dispute situate in the Halwaiyan Bazar of Budaun owned by Respondent No. 2. The father of the Petitioner died on 28.1.1993 and the tenancy devolved upon him. Respondent No. 2 filed a suit in 1994 for arrears of rent since 1.7.1985 and eviction of the Petitioner from the shop in dispute after the death of his father in 1993.

4. The Petitioner filed written statement denying the plaint allegations that there

were no arrears of rent as his father had made full payment in his life-time and the suit has been filed on false and frivolous grounds. It is further alleged that the Respondent did not serve any notice u/s 106 of the Transfer of Property Act upon the Petitioner and as such the suit was not maintainable.

5. Apart from filing the written statement the Petitioner filed an application for permission for making payment of the dues as claimed by the Respondent-landlord. When on two occasions the Petitioner did not turn up on the dates fixed, the Judge, Small Cause Court rejected the aforesaid application of the Petitioner. Revision No. 20 of 2000 was filed against the order of rejection before the Additional District Judge, Budaun, which was admitted and alleged to have been decided on 8.5.2002 on the ground of technicality and against the principles of natural justice.

6. This case is a glaring example of dilatory tactics adopted by the tenant. S.C.C. Suit No. 23/1994 was filed on 16.9.1994.

7. Sri M. A. Qadeer, learned Counsel for the Respondent has submitted that initially the Defendant-Petitioner filed no written statement. After a long time written statement was filed. Thereafter an amendment application was filed by him for amending the written statement which was rejected. Against the rejection order a revision was filed by the Petitioner which was dismissed on 12.1.1998.

8. It appears that after the evidence of the Plaintiff-Respondent was closed an application for recalling the evidence of Plaintiffs witness was moved by the Defendant-Petitioner which was rejected by order dated 13.10.1999 on the ground that inspite of several opportunities granted to the Petitioner-Defendant he adduced no evidence, hence the Court closed his evidence by order dated 16.2.1999. Thereafter an application for recall of order closing the evidence of the Petitioner was moved. The Court vide order dated 20.9.1999 on the aforesaid application for recall of the order granted 5 days" time to the Petitioner to lead evidence on costs of Rs. 800. The order granting time to the Petitioner to lead evidence on payment of costs was also not complied, instead another application for recall of the order imposing costs and for granting opportunity to lead evidence was filed on which the Petitioner was directed to comply with the earlier order of depositing costs by 13.10.1999.

9. The aforesaid order of the Court was also not complied with and when the Court below took up the case on 13.10.1999 an order was passed that the earlier order passed by it on 20.9.1999, stands revived.

10. It appears that another Application No. 129C was moved for recall of the order dated 13.10.1999 which was dismissed vide order dated 28.4.2000. Aggrieved by the order dated 28.4.2000, the Petitioner filed Civil Revision No. 20/2000 which was dismissed by order dated 8.5.2002.

11. After dismissal of Civil Revision No. 20/2000 the Petitioner again moved

another Application No. 173C before the trial court for recall of order dated 28.4.2000 which had already been challenged in the Civil Revision No. 20/2000 and merged in the revisional order. The aforesaid Application No. 173C was also dismissed by the Court below vide impugned order dated 9.10.2002.

12. The Petitioner has come up in this writ petition with the prayer that the order dated 9.10.2002 be quashed and direction in the nature of mandamus be given to the Judge, Small Cause Court, Budaun, to accept the dues and fix an early date for hearing and for fair disposal of S.C.C. Suit No. 23 of 1994, Radhey Shyam v. Suresh Chandra and others S.C.C. Suit No. 23 of 1994.

13. The learned Counsel for the Petitioner contends that the notice sent by the Plaintiff to Sri Raja Ram, the father of the Petitioner and Respondent Nos. 3 to 7 and 9, was time barred as he died on 28.1.1993 but the S.C.C. Suit No. 23 of 1994 has been instituted against the heirs and legal representatives of Sri Raja Ram.

14. In reply Sri M. A. Qadeer, learned Counsel for the Respondent-landlord states that the notice dated 19.9.1992 was served upon Sri Raja Ram on 23.9.1992, i.e., prior to his death on 28.1.1993, hence the suit has rightly been instituted as the Petitioner claims that the tenancy has devolved upon him on the death of Raja Ram besides upon Respondent Nos. 3 to 7 and 9.

15. There is no material on record to show that the Petitioner had made payment of the dues against him.

16. The Petitioner has directly come in writ jurisdiction under Article 226 of the Constitution against an interlocutory order passed by the trial court, which was earlier challenged in Civil Revision No. 20/2000 and admittedly the order passed in the civil revision was not challenged in any higher court and it has attained finality.

17. From the facts of the case stated above, it is apparent that the trial court has given full opportunity to the Petitioner at every stage but the Petitioner has been successfully delaying the decision of the dispute to attain finality. Neither the Court below nor the Respondent can be said to have acted in unfair manner as the Court below never denied any opportunity to hear the Petitioner.

18. Since the Petitioner has misused the process of law by filing frivolous applications and filed this writ petition to delay the decision of the dispute since 1994 by adopting dilatory tactics, as such he deserves deterrent punishment by imposing exemplary costs.

19. The petition is, therefore, liable to be dismissed with costs for the following reasons:

Costs:

In Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), the Hon"ble Supreme Court has held:

So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

20. Thus from the law laid down by the Hon'ble Apex Court in the aforesaid case of Salem Advocate Bar Association (supra), it is apparent that non-payment of cost is an exception for which special reasons have to be given by the Court and that in normal circumstances cost has to be awarded on the party according to the issue decided in favour of the party which were unnecessarily raised. The cost so imposed should be in accordance with rules and if the proceedings are unnecessarily protracted or adjournments have been sought it is upon the discretion of the Judge to impose exemplary cost taking also into account the circumstances etc. for the purpose of adjournment.

21. In so far as imposition of cost in the writ petition is concerned, provision has been made in the Allahabad High Court Rules, 1951. Chapter XXI, Rule 11 of the Rules provides for cost in writ in the nature of habeas corpus under Article 220 of the Constitution whereas Rule 9 of Chapter XXII of the said Rules provides costs in respect of direction, order or writ under Article 226 of the Constitution other than a writ in the nature of habeas corpus. In so far as writ of habeas corpus is concerned, provision for cost is given in Rule 11 of Chapter XXI.

22. Rule 9 of Chapter XXII of the Rules is as under:

Rule 9. Costs.--In disposing of an application under this Chapter the Court may make such order as to costs as it may consider just.

23. Rule 11 of Chapter XXI of the Rules is as under:

Rule 11. Costs.--In disposing of an application under this Chapter the Court may make such order as to costs as it may consider just.

24. From the aforesaid rule it is evident that the Court can make such order as to costs as it may consider just. It is discretionary power of the Court to impose cost, hence it cannot be said to be illegal or perverse. The Court should award cost for judicious approach taking into consideration the whole set of facts and circumstances and not award cost arbitrarily or capriciously.

25. As regards cost to be awarded in suit, Sections 35A and 35B of the Code of CPC take care of it. Sections 35A and 35B of the Code of CPC are as under:

35. Costs.

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

35A. Compensatory costs in respect of false or vexatious claims or defences.

(1) If in any suit or other proceeding (including an execution but excluding an appeal or a revision), any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, (if it so thinks fit), may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding (three thousand rupees) or exceeding the limits of its pecuniary jurisdiction, whichever amounts is less:

Provided that where the pecuniary limits of the jurisdiction of any court exercising the jurisdiction of a court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887), (or under a corresponding law in force in (any part of India to which the said Act does not extend) and not being a court constituted (under such Act or law), are less than two hundred and fifty rupees, the High Court may empower such court to award as costs under this Section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided further, that the High Court may limit the amount which any court or class of courts is empowered to award as costs under this Section.

(3) No person against whom an order has been made under this Section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this Section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

35B. Costs for causing delay.

(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit--

(a) fails to take the step which he was required by or under this Code to take on that date, or (b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of--

(a) the suit by the Plaintiff, where the Plaintiff was ordered to pay such costs, (b) the defence by the Defendant, where the Defendant was ordered to pay such costs.

Explanation.--Where separate defences have been raised by the Defendants or groups of Defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such Defendants or groups of Defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under Sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

Section 34 of the Code of CPC also provides for interest.

26. Thus, in view of the law laid down in Salem Advocate Bar Association (supra), imposition of costs is mandatory.

27. Considering the aforesaid decision of the Hon"ble Supreme Court as well as the provisions of Allahabad High Court Rules and the Code of CPC coupled with the fact that the Petitioners have filed this writ petition by concealment of material facts which he could and ought to have mentioned in the writ petition, i.e., regarding issuance of recovery certificate and laches in filing the writ petition after more than two years, deterrent and exemplary costs is necessary to be imposed. The Petitioners did not challenge the order of recovery and filed the writ petition after more than two years of passing the impugned order dated 10.12.2002. If the Petitioners would not have concealed the aforesaid facts, the Court would have directed the Petitioners to deposit the amount of recovery certificate as it was a money decree. By deliberate concealment of the aforesaid material facts the Petitioners not only remained out of the rigors of recovery but also saved interest on the aforesaid amount as they never informed the Court about the money decree in the appeal.

28. For the reasons stated above, the writ petition is dismissed with Rs. 40,000 as costs with 9% compound interest. The amount of costs of Rs. 40,000 shall be

deposited within a period of four months with this Court under the Head "Registrar General, Allahabad High Court Mediation and Conciliation Centre". If the costs are not paid the same shall be recovered as arrears of land revenue.