
(2007) 01 AHC CK 0003
In the Allahabad High Court

Manni Lal Gupta

APPELLANT

Vs

Waqf Haji Inayat Hussain and Another

RESPONDENT

Date of Decision : 03-01-2007

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 114

Citation : (2007) 4 ADJ 73 : (2008) 2 AWC 1955 : (2007) 102 RD 775

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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

2. By means of this writ petition the petitioner has challenged the order dated 22.5.2006 rejecting the recall application filed by the petitioner for recall of the order dated 24.8.2005 as well as for quashing the order dated 24.8.2005 dismissing the S.C.C. revision registered as Misc. Case No. 496/74 of 2005 and the order dated 19.5.2005, passed by the Judge, Small Causes Court, Kanpur Nagar in the aforesaid S.C.C. Suit No. 33 of 2003.

3. Brief facts of the case are that the respondents filed S.C.C. Suit No. 33 of 2003 in the Court of Judge, Small Causes Court, Kanpur Nagar. The suit was contested by the petitioner by filing written statement. The petitioner moved an amendment application under Order VI, Rule 17 of the C.P.C., for amending the written statement wherein it was averred that on account of some confusion that certain important facts and grounds could not be stated/taken in the written statement of the applicant-defendant and the said mistake came to the knowledge of the applicant-defendant while preparation of the case for final hearing.

4. It was also averred in the amendment application that the petitioner has brought to the notice of the Court all the material facts before the Court, which

according to him were essential for consideration for decision in the case. The amendment sought in the written statement given in paragraph 4 of the amendment application is as under:

4. Between paras 16 and 17, the following para 16A be written.

16A. That even if it is presumed that the said disputed accommodation is governed by the provisions of U.P. Act No. 13 of 1972 (which is not admitted to the defendant even then as the answering defendant has deposited the entire arrears of rent with interest and the costs of the suit on the first date of hearing, he is liable to be relieved from eviction under the provisions of Section 114 of Transfer of Property Act and no decree of his eviction can be passed in the present suit.

B. In para 1, line 4 words "shop" be deleted and in its place word "accommodation" be written.

C. In line 3 of para 3 word "disputed godown" be deleted and in its place words "tenanted accommodation" of "answering defendant" be written. In the end of the said para following words be added.

The tenanted accommodation of the answering defendant is comprised of one godown, labour quarter and common latrine and bathroom.

D. Between para 16A (to be added, and para 17, following paras "16B and 16C" be written.

16B. That as the plaintiffs have determined the tenancy of the answering defendant in piecemeal in respect of only godown his notice of demand and ejectment is absolutely illegal and the present suit for eviction of the answering defendant from the part of his tenanted accommodation is not also sustainable under the law.

16C. That the description and boundaries of the tenanted accommodation of the answering defendant is incorrect, as such the suit of the plaintiff is barred by the provisions of Order VII, Rule 3, C.P.C.

D. In verification paragraph between figure"16 and word and" "figure "16A, 16B and 16C" and be written.

5. It was also averred in paragraph 5 of the amendment application that the aforesaid amendments would not change the nature of the case.

6. The Judge, Small Causes Court, Kanpur Nagar vide order dated 19.5.2005 rejected the aforesaid amendment application of the petitioner holding that the trial has begun and the evidence of P.W. 1 on behalf of the plaintiff has already been concluded and as such the amendment application was not liable to be accepted as conditions laid down in Order VI, Rule 17 are not satisfied. The Court has further held that the petitioner has given a false affidavit for making out a case. The order dated 19.5.2005 of the Judge. Small Causes Court, Kanpur

Nagar is as under:

19-5-2005

vkt frfFk izkFkZuk i= 41x ds fuLrkj.k gsrq fu;r gS A ;g izkFkZuk i= izfrokn us izfrokn i= esa la"kks/ku djus gsrq vkns"k 5] fu;e 17 ds rgr e; "kiFk i= 42 x fn;k gS ftlesa dgk gS fd vafre lquokbZ ds le; i=koyh dk voyksdu djus ls irk pyk fd dqN xyfr;kWa gks x;h gS tks rF; i=koyh ij yk;k tkuk vko;"d gS A vr% la"kks/ku izkFkZuk i= izLrqr fd;k tk jgk gS A

lqok rFkk i=koyh dk voyksdu fd;k A

;g okn izfrokn }kjk izfrokn i= fnukad 6-3-2004 dks izLrqr djus ds i"pkr~ lk{; esa fu;r gks x;k gS vkSj rc ls okn dh rjQ ls ih0 MCyw0 Mh0 1 dk lk{; gks pqdk gS mlds i"pkr~ ;g izkFkZuk&i= izfrokn }kjk la"kks/ku djus gsrq fn;k gS A izfrokn dk ;g dFku gS fd vafre lquokbZ ds fy, i=koyh dh rS;kjh dj jgk Fkk rks dqN xyfr;kWa izfrokn ekeyk gS ftlls ;g Li"V gks tkrk fd okn dk fuokj.k "kq: gks x;k gS vkns"k 6] fu;e 17] lh0 ih0 lh0 ds ijUrqd ds vuqlkj dksbZ Hkh la"kks/ku izkFkZuk&i= Lohdkj ugh fd;k tk;sxk tc rd fd dksbZ rF; i"pkr~orhZ u gqv k gks vkSj mudh tkudkj i{kdkjks dks igys ls u jgh gks A izLrqr okn pwafr fopkj.k eas fu;r Fkk vkSj ftu rF; ds ckjs esa izfrokn vc la"kks/ku ds ek;/e ls ykuk pkgrk gS ;g mls iwoZ tkudkj esa Fkh dksbZ i"pkr~orhZ nkSjku eqdnek dk la"kks/ku ugh ekaxk gS ,slh fLFkfr esa vkns"k 6] fu;e 17 ds ijUrqd ds vuqlkj fopkj.k "kq: gksus ds i"pkr~ dksbZ Hkh la"kks/ku izkFkZuk i= iks"k.kh; ugh gS blfy, izfrokn dk izkFkZuk&i= iks"k.kh; ugh gS blfy, izfrokn dk izkFkZuk&i= iks"k.kh; ugh gS] fujLr fd;k tkrk gS A i=koyh okLrs ftjg ih0 Mcyw 1 fnukad 17-8-2005 dks is"k gks A

g0 viBuh; y?kqokn U;k;k/kh"k] dkuiqj uxjA

7. In the memo of revision u/s 25 of the Provincial Small Causes Courts Act the grounds taken by the petitioner are that the whole approach of learned lower court in rejecting the amendment application of the defendant-revisionist was erroneous and are based on surmises and conjectures and it has committed manifest error of law by ignoring the fact that the amendment sought was bona fide; that the proposed amendment sought was in the nature of legal pleas which can be raised at any stage of the suit hence, subsequent amendment of this nature can be brought by way of amendment.

8. It was also averred that the lower court has exercised a jurisdiction which was not vested in it by law and has exercised the Jurisdiction vested in it illegally and with material irregularity, hence, the impugned order is not sustainable under law.

9. The revisional court by the impugned order dated 24.8.2005 held that there was no legal error in the order passed by the court below therefore, the revision has, no force and dismissed accordingly.

10. The order dated 24.8.2005 of the revisional court is as under:

24-8-2005

vkt ;g y?kqokn fuxjkuh okLrs leLr vaxhdj.k is"k gqv k A

vkns"k gqv k fd&

Register as Misc. Case.

None is present for the revisionist to press the revision.

Heard the learned Counsel for the opposite party and perused the record. It appears that the learned lower court rejected the revisionist's application for amendment of the written statement on the ground that the amendment application was not maintainable, " as the trial had already commenced before the application for amendment was moved. The learned lower court held that the amendment application was not maintainable. I do not find any legal error in the order passed by the learned lower court. The revision has, therefore, no force and it is dismissed accordingly.

Sd. Illegible I/C D.J. Special Judge S.C. & S.T. Act Kanpur Nagar 24.8.2005.

11. It appears from the record that the petitioner moved an application 5 Ga-2 before the revisional court for recall of the aforesaid order dated 24.8.2005 alleging it to be an ex parte order. The application for recall was rejected by the revisional court vide order dated 22.5.2006.

12. The revisional court by the impugned order dated 22.5.2006 has considered the case of the petitioner that the revision has been decided ex parte by order dated 24.8.2005 and came to the conclusion that though the order dated 24.8.2005 was passed ex parte but it was on merit. It held that the court below has given a clear cut finding that from perusal of the record there was no illegality in the order.

13. The contention of the counsel for the petitioner is that the court below while passing the impugned order has failed to consider that

(i) that the amendment sought by the petitioner was necessary for determination of real controversy involved between the parties;

(ii) that the revisional court has failed to appreciate the aspect that the order dated 24.8.2005 had been passed in gross violation of principles of natural justice;

(iii) that there was no delay on behalf of the defendant-petitioner for filing the application under Order VI, Rule 17, C.P.C. and as such the Court has committed an illegality in holding that the application has been moved after commencement of the trial, hence it is not tenable in the eye of law ;

(iv) that both the courts below have failed to appreciate that in Small Causes Court every date is the date of final hearing, as such the reasoning given in the impugned orders has no relevance.

14. The counsel for the petitioner has urged that there are various pronouncements of the Hon''ble Supreme Court and the High Courts in which it has been consistently held that the rule of amendment is essentially a rule of Justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice between the parties before the Court.

15. It is next contended by the counsel for the petitioner that the Hon''ble Supreme Court has also consistently held that the main rules of pleadings in Order VI, Rule 17, C.P.C. 1908 show that provision for amendment of pleadings is subject to such terms of costs as may be provided for promoting the ends of justice and not for defeating them and as such the party cannot be refused relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. It is submitted that the Courts always give leave to amend the pleading of a party unless it is satisfied that the party applying for amendment was acting mala fide or that he may cause injury to the other party which may not be compensated in terms of the cost but as there is nothing on record on the basis of which any such inference as referred can be drawn, the revisional court below ought to have allowed the amendment sought by the petitioner.

16. It is also urged that the amendment sought by the petitioner are necessary for deciding the controversy involved in the matter and in case the amendment is not allowed to be incorporated, the petitioner would suffer irreparable loss and injury.

17. The counsel for the petitioner has placed reliance upon the following rulings in support of his above submission.

1. Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others,
2. Abdul Mateem Vs. Mehendi Hasan and Another, and
3. Pastor, Central Methodist Church Vs. Kailash Chand Saxena and Others,

18. The counsel for the petitioner has also relied upon Order VII, Rule 3, C.P.C. in this regard.

19. He states that as the plaintiff has not given clear description of the accommodation under the tenancy of the petitioner and has given boundaries of the godown only which is clear from the amendment sought by the petitioner hence, the suit was liable to be dismissed for giving vague boundaries of the immovable property in respect of which relief was sought.

20. The counsel for the petitioner further submitted that the legal grounds can be raised at any time during the pendency of the suit as such the court below has committed an illegality in refusing to allow him to incorporate the legal grounds, hence the impugned order is liable to be set aside.

21. To test the arguments of the counsel for the petitioner the relief sought in

the suit and the boundaries in respect of the property in relation thereto may be seen. Reliefs given in the suit are as under:

RELIEFS

The plaintiffs, therefore, claim the following reliefs:

(A) A decree for ejectment of the defendant from the godown situated in House No. 81/104, Coolie Bazar, Kanpur fully bounded and described hereinbelow at the foot of the plaint be passed in favour of the plaintiffs and as against the defendant and possession thereof be got delivered to the plaintiffs through the agency of the Court.

(B) A decree for Rs. 4,920 being the amount of arrears of rent be passed in favour of the plaintiffs and as against the defendant.

(C) A decree for Rs. 3,036 being the amount of accrued means profits be passed in favour of the plaintiffs and as against the defendant.

(D) A decree for Rs. 1,432/.0808 paise being the amount of taxes be passed in favour of the plaintiffs and as against the defendant.

(E) A decree of pendente lite and future damages @ Rs. 360 per month till actual eviction of the defendant be passed in favour of the plaintiffs and as against the defendant.

(F) Costs of the suit be awarded in favour of the plaintiffs and as against the defendant.

(G) Any other relief which this Hon''ble Court may deem fit and proper under the circumstances of the case be also awarded in favour of the plaintiffs.

Boundaries of House No. 81/104, Coolie Bazar, Kanpur

East : House of Sheikh Lallan

West : Road

North : House of Sheikh Lallan

South : Gali

Boundaries of the Godown situated in House No. 81/104 Coolie Bazar, Kanpur from which eviction of the defendant is sought:

East : House of Sheikh Lallan

West : Godown in occupation of Jagdish Narain Tenant

North : Door of the godown thereafter Gali

South : Courtyard of the House

Sd. Illegible Plaintiffs.

22. From the relief it is apparent that the landlord has only sought relief of ejectment from the godown situate in House No. 81/104 Coolie Bazar, arrears of rent and mesne profits, a decree in respect of taxes, a decree for pendente lite and future damages till actual eviction and cost of suit etc. In respect of a godown under the possession of the petitioner and not in respect of the whole of the accommodation. The boundaries of the godown have also been distinctly given.

23. A landlord is entitled even for release of a part of the accommodation. The specific case of the landlord was for release of the godown and not for whole of the accommodation, hence the contention of the counsel that clear description of the property in respect of which relief is sought has not been given by the plaintiff is incorrect and against the record.

24. The other pleas admittedly being the legal pleas were not required to be incorporated by amendment by the petitioner as it is well-settled law that the legal pleas can be taken at any time.

25. The case of Rajesh Kumar Aggarwal (supra) cited by the counsel for the petitioner deals with the approach to be taken by Courts in considering whether to permit amendment or need to consider subsequent events. The Court analysed the Order VI, Rule 17, C.P.C. holding that normally the Courts should allow all amendments which are necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side though the Courts have been cautioned by the Apex Court that they should not go into correctness or falsity of the case in the amendment, nor record a finding on the merits of amendment at the stage of considering the prayer for amendment. The Apex Court in the peculiar facts and circumstances of the case of Rajesh Kumar Aggarwal held that if it was permissible for appellants to file an independent suit on basis of the amendment application turned down by the High Court, it is incomprehensible why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

26. However, in the instant case admittedly the amendments were in respect of legal pleas, which even according to the counsel for the petitioner could have been raised by the petitioner at any time. The amendments sought do not appear to be very material so as to change the nature of the suit or cause any injustice or prejudice to other party.

27. In the case of the Postor. Central Methodist Church, Aligarh (supra) it has been held that the Court has only to look as to whether the ingredients of Order VI, Rule 17 are satisfied or not. In that case hearing had not been started and the reason for delay in moving the amendment application had been explained in the application itself.

28. In the case of Abdul Mateen's case (supra) written statement and amendment application have been moved prior to the date of amendment, as

such amended provision of Order VI, Rule 17 was not applicable in view-of Section 16(2)(b) of Act No. 22 of 2002. In that case the amendment was filed after 10 years from filing of written statement but filed when the process of evidence had been started. In the circumstances, the Court has held that the filing of the amendment application after ten years would not make any difference and even if the amendment would have been incorporated, it would not amount to causing any delay in the proceedings. The Court allowed the amendment to be incorporated on payment of Rs. 10,000 costs.

29. The counsel for the petitioner has urged that the petitioner may be permitted to raise legal pleas on payment of minor cost.

30. It is apparent that no due diligence had been shown by the petitioner and the court below has not taken any hyper technical view in rejecting the amendment application of the petitioner. On the contrary, the court below has given cogent reasons for rejecting the application that it does not satisfy the ingredients of Order VI, Rule 17, C.P.C. as the trial has already commenced.

31. In this regard the provisions of Order VI, Rule 17, C.P.C. may also be examined.

32. Before the amendment. Order VI, Rule 17 of the C.P.C. was as follows:

Order VI, Rule 17, C.P.C. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

33. Thereafter, by way of amendment, the following has been substituted w.e.f. 1.7.2002:

Order VI. Rule 17, C.P.C. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

34. Perusal of Order VI, Rule 17, C.P.C. would show that it is in two parts--

(i) the amendment can be made before the conclusion of the trial ; and

(ii) the amendment can be made after the commencement of the trial only after the ingredients of proviso of Order VI, Rule 17 of the C.P.C. are satisfied and if the Court is satisfied that the parties could not have raised the matter before the commencement of the trial.

35. It may be mentioned that the petitioner has not even cared to file copy of

the application 5Ga-2 giving grounds for recall of the order dated 24.8.2005 which has been rejected by the revisional court.

36. In the instant case, no justifiable and cogent reasons for delay in moving the amendment application have been given after the trial has commenced and admittedly the petitioner was preparing the case for final hearing that he moved the application for amendment. The only reason that has been advanced is vague that on account of some confusion important facts and grounds could not be stated/taken in the written statement, the amendment application could not be moved is vague.

37. In my opinion, the purpose and object of Order VI, Rule 17, C.P.C. is to allow the party to alter or amend his pleadings in such terms and conditions as may be just and proper which may not harm or prejudice the other party.

38. After going through the impugned order and hearing the counsel for the petitioner I am of the view that the amendment sought by the petitioner was not necessary for determination of real controversy involved between the parties as it is apparent from the relief sought in the plaint quoted above in the judgment. It was only in respect of the godown of which boundaries are clearly and distinctly given. The order dated 24.8.2005, is on merit. If a party does not appear before the Court, he cannot claim that he has not been granted any opportunity of hearing or that the order has been passed in violation of the principle of natural justice. The petitioner was well aware of the date and it was his duty to have appeared before the Court or made a request to the Court that if for some reasons his counsel was not able to appear on the date fixed. The application under Order VI, Rule 17, C.P.C. moved by the petitioner clearly did not satisfy the ingredients of the proviso since the trial has already begun. The application of the petitioner was rightly rejected as the relief sought by him could be taken at any time. He cannot get any advantage of the fact that he was under confusion or his counsel was under confusion, as such certain facts could not be brought to the notice of the Court. The facts, which the petitioner wanted to incorporate regarding vagueness of boundaries etc. were always available to him and in any case were part of record on the plaint. The amendment was not therefore, in respect of fact which was not in the knowledge of the petitioner or not on the record or some new facts could not be raised before the commencement of the trial inspite of due diligence by the party. It is not in dispute that every date is a date of final hearing. However, what is relevant is that normally the amendment cannot be allowed after the trial has commenced till the Court comes to the conclusion that inspite of due diligence the petitioner could not have raised the matter before the commencement of the trial. It is therefore, wholly misconceived and wrong to say that the reason given in the impugned order is of no relevance. As regards cases cited by the counsel for the petitioner, they have been dealt with in great details and are not applicable to the facts and circumstances of the instant case except that the Court may allow the petitioner to raise legal pleas on imposition of cost. What appears from the

arguments of the counsel for the petitioner is that in the garb of legal pleas he wants to raise factual pleas that the boundaries of the accommodation have not been given in clarity and are vague, hence the suit is liable to be rejected under Order VI, Rule 3, C.P.C. The boundaries have been clearly given or are vague is a matter of fact. The petitioner has moved the amendment application in the garb of legal pleas with ulterior motive, which would cause injustice and prejudice to the other party. There is no illegality or infirmity in the impugned order and the court below has acted within the four corners of rules and law while disallowing the application for amendment of the petitioner inasmuch as the petitioner has not shown any sufficient cause for amending the written statement. In fact, there is no explanation in the application of day-to-day delay.

39. Moreover, the petitioner has also not filed the copy of the application 5-Ga before this Court as such he has not come with clean hands before this Court while assailing the orders of the court below.

40. In the facts and circumstances of the case, the writ petition is liable to be dismissed with heavy and deterrent cost.

41. The Apex Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), has held that:

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.

42. 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.

43. In so far as imposition of cost in the writ petition is concerned, provision has been made in the Allahabad High Court Rules, 1952. Chapter XXI, Rule 11 of the Rules provides for cost in writ in the nature of habeas corpus under Article 226 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.

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.

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.

44. 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.

45. As regards cost to be awarded in suit, Sections 35A and 35B of the CPC take care of it. Sections 35A and 35B of the C.P.C. 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) falls 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 C.P.C. also provides for interest.

46. In my opinion while awarding interest on a party by non-payment of principal amount or any dues should also be considered by the Court and not only interest but penal interest may also be awarded. Since, it is a frivolous petition, the cost is to be deterrent and exemplary.

47. In the facts and circumstances of the case, the petition is dismissed with cost of Rs. 20,000 which shall be deposited by the petitioner before the Court of Judge, Small Causes Court, Kanpur Nagar in S.C.C. Suit No. 33 of 2003. The cost so deposited can be withdrawn by the respondents without furnishing any security within two months from today.