(1976) 04 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1364 of 1975

M/s. Parvesh Industries, Ludhana and another — APPELLANT

Vs

M/s. Jaswant Rai Thapar — RESPONDENT

Date of Decision : 26-04-1976

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 16 Rule 19

Citation : (1976) 04 P&H CK 0010

Hon'ble Judges : D.S. Lamba, J

Bench : Single Bench

Advocate : M.S. Jain, for the Appellant; Surjit Kaur Tounque, for the Respondent

Final Decision : Allowed

Judgement

D.S. Lamba, J.—Messrs Jaswant Rai Thapar and Sons, Ludhiana (hereinafter called the Respondents) filed a suit against Messrs Parvesh Industries, Ludhiana (hereinafter called the Petitioners of the recovery of Rs. 6000/- on the basis of a receipt, dated 6th March, 1970 in the Court of Subordinate Judge Ist Class, Ludhiana. The Suit was contested by the Petitioners on the pleas inter-alia that the receipt alleged to have been executed was a forged one inasmuch as the receipt in question bore a revenue stamp which was not in use in the year 1970.

2. During the pendency of the suit, on 27th September, 1975, the following statement was made by Shri S. S. Oberoi, counsel for the Petitioners which was also signed by Jawahar Lal, one of their partners:-

I request that a Local Commissioner be appointed to examine expert at Nasik (Bombay) to report as to when the Revenue Stamp, Exhibit P. 1, was issued, at my expenses, I will also bear the part expenses of the Plaintiff''s counsel.

On this the learned Subordinate Judge passed the following order the same day:-

As per statement of the Defendant and his counsel recorded above and with the consent of the parties I appoint Shri Mahesh Inder Singh Grewal, Advocate as

Local Commissioner to go to Nasik and examine expert there when revenue stamp on receipt was issued and his fee of Rs. 500/- shall be paid by the Defendant. Rs. 100/- shall be paid by the Defendant as part fee to the counsel for the Plaintiff. The Defendant should deposit or pay the amount in question to the person concerned within a week. In case this is not done the application for the Defendant shall be deemed to be dismissed. To come up on 6th October, 1975.

3. Thereafter the Petitioners moved an application before the learned Subordinate Judge on 30th September, 1975 praying therein that the orders passed on 27th September, 1975 be reviewed and a commission be issued to the Court at Nasik for the examination of the expert on revenue stamp of the Government Press, Nasik, and that the witness be examined on interrogatories. The said application was dismissed by the learned Subordinate Judge on 30th September, 1975 with the following orders:-

Shri S. S. Oberoi, Advocate, and Defendant Jawahar Lal are present. Heard, the Local Commission was appointed after the statement of the Defendant and his counsel was recorded. No reason. Rejected.

Feeling aggrieved, the Petitioners have approached this Court in revision.

4. The Learned Counsel for the Petitioners has contended that it cannot be spelt out from the statement of Shri S S. Oberoi, Advocate, Ludhiana, recorded by the learned Subordinate Judge on 27th September, 1975 that the counsel had agreed to the appointment of an Advocate of Ludhiana to act as a commission for recording the statement of the expert on revenue stamp of the Government Press Nasik. He has further contended that the expenses fixed by the learned Sub-ordinate Judge are too excessive and that it was never anticipated, nor the Court ever gave out its mind to the counsel, that the Court was recording the statement with a view to appoint a local Advocate of Ludhiana to go to Nasik for the examination of the expert on commission. In support of his contention the Learned Counsel has relied on S. Thakar Singh v. Carriers Finance Private Ltd 1969 PLR D 213. After carefully examining the statement of Shri S. S. Oberoi, Advocate, reproduced above, I am of the view that it has been clearly misconstrued by the trial Court, because in the statement the Advocate never stated that an Advocate of Ludhiana be appointed as a Local Commissioner, to go to Nasik to examine the expert there. Admittedly the witness who was sought to be examined resided outside the jurisdiction of the Court and beyond 200 miles, and he could not be summoned in view of the provisions of Order 16, Rule 19 of the Code of Civil Procedure. To this extent the learned Subordinate Judge rightly came to the conclusion that it was a fit and proper case where the expert should be examined on commission. I, however, do not find any justification when he appointed an Advocate of Ludhiana to go all the way to Nasik to examine the expert on revenue stamp. It appears that the learned Subordinate Judge did not use his judicial discretion while passing that order and merely acted on the statements of the parties, which is being disputed. The learned Subordinate

Judge did not give any reason as to why he considered it fit to appoint an advocate of Ludhiana to go to Nasik instead of issuing a commission or sending a letter of request to the District Judge at Nasik to appoint an advocate of his Court as a Commissioner for the purpose, It is true that an order regarding the appointment of a commissioner under Order 26, Rule 4 of the CPC is discretionary, but the discretion has to be exercised judicially. In doing so the Court has to consider the just and right thing to do on the facts of each case.

5. In the present case the Petitioners filed an application on the 30th September, 1975 before the learned Subordinate Judge for reviewing the impugned order, praying that commission be issued to the Court at Nasik for the examination of the expert, but the prayer was rejected vide his order of that date reproduced earlier. It did not at all weigh with the learned trial Court that expenses that will be incurred by the commissioner in going all the way from Ludhiana to Nasik would be very heavy, while the expenses will be much less if an advocate of Nasik was appointed as commissioner. The argument of the Learned Counsel for the Respondents that probably the Court below thought that the procedure to be adopted for the appointment of an Advocate at Nasik as commissioner to get his report would involve a good deal of delay in the disposal of the suit, does not sound convincing. A letter-of-request to the District Judge at Nasik to appoint an Advocate of his Court as commissioner to make the necessary report by a certain date can very well serve the purpose, and save a lot of unnecessary expense.

6. In view of the above, I allow this revision petition and direct the trail Court to send without any further delay an appropriate commission or letter-of request to the learned District Judge, Nasik through proper channel to appoint an Advocate of his Court as Commissioner for recording at a very early date the statement of the expert on the point, and to send the same to the trial Court at the earliest possible. Ordinarily the expenses of commission under Order 26, Rule 4, CPC Code, would not include the expenses of the opposite party such as part expenses of the opposing counsel, but here in this case the Petitioners by making a statement had agreed to bear the part expenses of the Respondents counsel on the basis of which the learned trial Court ordered payment of Rs. 100/- to the counsel for the Respondents. In view of this statement it does not now lie in the mouth of the Petitioner to say that this part of the order of the learned trail Judge not acceptable to them. This amount shall be paid to the counsel for the Respondents at Ludhiana if he chooses to go to Nasik, or to the lawyer who may be appointed by them so as to defend their case at Nasik.

There will be no order as to costs in this Court.

