

(1955) 10 RAJ CK 0009

In the Rajasthan High Court

Case No : Appln. under Order 12, Rule 5 of the Supreme Court Rules

Mst. Gulab Bai

APPELLANT

Vs

Mst. Manphool Bai

RESPONDENT

Date of Decision : 13-10-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 7, Order 45 Rule 8
Rajasthan High Court of Judicature Rules, 1952 — Rule 394
Supreme Court Rules, 1950 — Order 12 Rule 3, Order 12 Rule 5

Citation : AIR 1956 Raj 98 : (1956) RLW 400

Hon'ble Judges : K.N. Wanchoo, C.J;K.D. Sharma, J

Bench : Division Bench

Advocate : P.C. Bhandari and S.M. Mehta, for the Appellant; R.K. Rastogi, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an application by Manphool Bai under Order 12, Rule 5 of the Supreme-Court Rules, and it is prayed that this Court should issue a certificate that the appeal has not been effectually prosecuted by the appellant.

2. The circumstances leading to this application may be briefly narrated. A suit was brought by Mst. Manphool Bai in November, 1943, for arrears of rent and ejectment against Laduram who was tenant of the shop in dispute, and Mst. Gulab Bai who was also" made a defendant though no relief was claimed against her.

It may be mentioned that Manphool Bai claimed to be the daughter-in-law of Gulab Bai by virtue of the adoption of her husband by Gulab Bai, and filed the suit as the widow of the adopted son Phool Chand. The suit was decreed by the first Court, but on appeal the District Judge set aside that decree, and dismissed the suit.

Thereupon, there was a second appeal in this Court, which was allowed on

2-1-1952, and the suit was decreed against Laduram. There was then an application for leave to appeal by Mst. Gulab Bai on 28-1-1952, and a certificate was granted to her on 30-9-1953.

3. We are in this case concerned with what happened after the certificate was granted. Under Order 45, Rule 7, the applicant for leave co appeal has to take certain steps after the certificate is granted. He has within 90 days, or such further period, not exceeding sixty days, as the Court may upon cause shown allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever be the later date, to furnish security for the costs of the respondent, and deposit the amount required to defray the expenses of translating, transcribing, etc.

Thus Rule 7 provides that within six weeks of the grant of the certificate the applicant shall furnish security as well as deposit the amount required for the preparation of the record.

As the rule requires the deposit of the amount required for the preparation of the record within six weeks of the grant of the certificate, and as that amount has to be determined after it is known what papers have to be translated, transcribed, indexed and printed, the rules of this Court have prescribed under Rule 394 that the applicant shall within ten days of the grant of such certificate apply to the Registrar for the preparation of a list of papers to be included in the record, and for making of an estimate of the cost of preparing the record and transmitting it to the Supreme Court.

This application is necessary and Rule 394 of this Court provides only ten days for making it because the total period under Order 45, Rule 7 is only six weeks for deposit of the amount required for preparation of the record. Then follow Rules 395 and 396 which are matter of detail except that a notice has to be given of the list of papers to the advocate for the opposite party.

Then under Rule 397 the Registrar causes an estimate to be prepared of the costs of translating, etc., and this estimate is to be prepared within ten days, under Rule 397 (3) and delivered to the applicant's advocate. So within twenty days of the application under Rule 394 the applicant should be in possession of the amount required for preparing the record.

Rule 398 prescribes for objection, if any, to the list prepared by the Registrar within two weeks. Rule 399 prescribes for final settlement of lists by the Registrar after hearing objections, if any. Any party aggrieved by the decision of the Registrar may within seven days from the date of such decision, furnish to the Registrar his grounds of objection to such decision, and these grounds are heard by the Court in Chambers.

Thereafter, a revised estimate of costs is prepared, and copy of it delivered to the applicant. We may mention that under Rule 397 (2) it is also provided that the Registrar shall include in the estimate an additional sum of Rs. 100/- or such

larger sum as the Registrar may deem fit to cover any possible additional cost of preparation and transmission of the record.

It follows therefore that the scheme of these rules from 394 to 397 is that the applicant has to file his application for preparation of the record within ten days of the grant of certificate and it is the duty of the Registrar to give him the estimate within another ten days, and thereafter he must deposit the amount required under this estimate With., in the period fixed under Order 45, Rule 7 i.e. within six weeks of the date of the grant of the certificate, if that is the later of the two dates mentioned in that rule as it is likely to be in most cases.

The procedure as to objection under Rule 398, and the final settlement of lists under Rule 399, and preparation of the revised estimate under Rule 399 (2) are gone through, simultaneously and even afterwards. It is not the intention of these two rules that the deposit of the amount as mentioned in the estimate prepared under Rule 397 (2) should be withheld till the objections under Rules 398 and 399 are decided.

If that was so, the provision of Order 45, Rule 7 would not be complied with, which lays down that the amount required to defray the expenses of preparation of the record shall be deposited within six weeks of the grant of the certificate.

If any deficiency is found when the revised estimate is made, and that deficiency is not covered by the additional sum of Rs. 100/-, or any other sum fixed by the Registrar under Rule 397 (2), it is always open to the Court under Order 45, Rule 10, C. P. C. to ask for further payment for purposes of the preparation of the paper book.

The first step, therefore, that has to be taken after the certificate has been granted under Order 45, Rule 7 is the application for lists under Rule 394 within ten days. Within further ten days, the Registrar gives an estimate to the applicant, and within another 22 days the applicant has to deposit the amount of the estimate under Order 45, Rule 7, C. P. C.

The proceedings under Rules 398 and 399 can continue independently of the deposit as required under Order 45, Rule 7. After the security has been furnished, and the amount required for the preparation of the paper book has been deposited as mentioned above, we come to Order 45, Rule 8.

The Court then declares the appeal admitted and gives notice thereof to the respondent, and transmits the record to the Supreme Court, and gives copies of the papers if so required, and paid for to the parties applying for it.

4. It is in this setting that we have to consider Order 12, Rule 5 and Order 15, Rule 1 of the Supreme Court Rules. Order 12, Rule 5 is as follows:

"Where an appellant whose appeal has been admitted "fails to show due diligence in taking all necessary steps in connection with the preparation of the Record, the High Court may, either on its own motion, or on the application of

the respondent, call upon the appellant to show cause why a certificate should not be issued that the appeal has not been, effectually prosecuted by the Appellant, and if the High Court sees fit to issue such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without an express order of this Court, and the costs of the appeal and the security entered into by the appellant, shall be dealt with in such manner as the High Court thinks fit to direct".

Order 15 which is headed "Preparation of record, etc." makes the following provision in Rule 1:

"As soon as the appeal has been admitted, whether by an order of the Court appealed from or by an order of this Court granting special leave to appeal, the appellant shall, without delay, take all necessary steps to have the printed Record transmitted to the Registrar of this Court, and the Registrar of the Court appealed, from shall, with all convenient speed, certify to the Registrar of this Court that the respondent has received notice, or is otherwise aware, of the order of the Court appealed from admitting the appeal, or of the order of this Court giving the appellant special leave to appeal".

5. The contention on behalf of Mst. Manphool Bai is that it was the duty of Mst. Gulab Bai to take steps as required by Rule 394 and subsequent rules of this Court, and inasmuch as she failed to do so with due diligence, this Court should certify that the appeal has not been effectually prosecuted.

On the other hand, it is contended on behalf of Mst. Gulab Bai that under Rule 5 of Order 12 of the Supreme Court Rules, the diligence has to be seen after the appeal has been admitted under Order 45, Rule 8, C. P. C., and if that is done, it will be found that there has been no negligence on the part of Mst. Gulab Bai appellant.

6. Let us now see what steps were taken by the appellant Mst. Gulab Bai after the certificate was granted on 30-9-1953. We find that the security was deposited on 4-11-1954.

Further an advance of sum of Rs. 500/- was also deposited for preparation of the paper book within six weeks of the order granting the certificate, but no application as provided by Rule 394 of the Rules of this Court was made till 8-4-1954, i.e. more than six months after the grant of the certificate, though the rule requires that it should be made within ten days.

It is urged on behalf of Manphool Bai respondent that this shows negligence on the part of Mst. Gulab Bai. Notice of the lists was served on the respondent on 4-11-1954, the delay in this case being apparently due to the office of this Court. Thereafter, the present objection was made on 11-11-1954.

The lists were agreed upon by counsel for the parties on 19.4.1955 Thereafter, it seems that the estimate was prepared, and as it was heavy, an application was made on 7-7- 1955 by the appellant that she wanted to confine the appeal to a

point of law, and therefore only those papers, which were relevant to the point of law, should be printed.

But the grounds of appeal other than those concerning the point of law were not withdrawn till 23-9-1955, after we had given notice to the appellant to show cause why it should not be certified that she has not effectually prosecuted the appeal.

It does, however, appear that the delay after 8-4-1954, was more in the office of this Court than by the appellant except that matter of withdrawing grounds other than those concerned with the point of law to which the appeal was being confined by the application of 7-7-1955.

7. The first question, that arises therefore, is whether Order 12, Rule 5 of the Supreme Court Rules contemplates that action can, be taken about negligence which took place before the appeal was admitted under Order 45, Rule 8, C. P. C.

We are of opinion that it does" even though the opening words used in Rule 5 refer to an appellant whose appeal has been admitted. The reason why the opening words refer to the appellant whose appeal is admitted is that wherever an appeal has not been admitted, Order 12, Rule 3 of the Supreme Court Rules would apply.

The question of issuing a certificate contemplated under Order 12, Rule 5 only arises when the appeal has been admitted, for the effect of such a certificate is the dismissal of the appeal. No question of dismissal would arise unless the appeal has been admitted under Order 45, Rule 8, C. P. C.

But most of the steps which the appellant has to take in connection with the preparation of the record are taken before the appeal is admitted under Order 45, Rule 8, C. P. C. Thereafter, it is the duty of the Court to get the record prepared, and the only thing that the appellant has to do is to ask the Court to transmit the record to the Supreme Court as soon as it is prepared.

The" steps which the appellant has to take after the certificate has been granted for the preparation of the record consist mainly of the deposit of the required amount and the submission of the lists as required by Rule 394. Once these lists have been submitted, and the required amount calculated, all that the appellant has to do is to deposit the amount.

Thereafter, the appeal is admitted, and it is the duty of the Court to prepare the record according to the lists. Therefore, the negligence that is contemplated under Rule 5, Order 12 of the Supreme Court Rules is mainly negligence preceding the admission of the appeal.

In this case, there was undoubtedly negligence Inasmuch as no application as required by Rule 394 was made within 10 days. The explanation given on behalf of the appellant for not complying with Rule 394 is that it was only after the appeal had been admitted that necessary steps for getting the record printed had

to be taken as laid down in Order 15 Rule 1 of the Supreme Court Rules.

"There is obviously a confusion in the mind of the applicant in this connection. It is true that Order 15 is headed "Preparation of Record etc.", and there are rules in it about the preparation of record, but Rule 1, upon which the appellant specifically relies, only mentions transmission of the record, and not the preparation of the record.

Naturally the appellant can only take steps about the transmission of the record after the appeal has been admitted, but steps about the preparation of the record have to be taken Immediately the certificate under Order 45, Rule 7 is granted, and have not to wait for the admission of the appeal under Order 45, Rule 8, O. P. O.

The explanation, therefore, that has been given for the delay by the appellant, in this case, is certainly not satisfactory. But taking into account the fact that these things are new so far as this Court is concerned, and remembering that the appellant might have been misled to a certain extent because the opening words of Order 12, Rule 5 refer to an admitted appeal, we do not propose to grant a certificate in this case to the effect that the appeal has not been effectually prosecuted.

We must, however, make it" dear that after we have explained the procedure in this case, we shall be constrained to grant certificate that the appeal has not been effectually prosecuted if we find similar delays in other cases.

8. We, therefore, dismiss the application of Mst. Manphool Bai but pass no order as to its costs in the circumstances of this case.