
(1989) 07 AHC CK 0068
In the Allahabad High Court
Case No : Writ Petition No. 8399 of 1989

Naresh Kumar Gupta

APPELLANT

Vs

The 3rd Addl. District Judge, Bulandshahar and others

RESPONDENT

Date of Decision : 21-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 10 Rule 3, Order 15 Rule 4, Order 18 Rule 12, Order 18 Rule 5
Provincial Small Cause Courts Act, 1887 — Section 17, 25, 9

Citation : AIR 1990 All 23

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : Sudhir Narain Agarwal, for the Appellant;

Final Decision : Disposed Of

Judgement

1. The basic question to be decided in the present petition is whether a revision under S. 25 of Provincial Small Cause Courts Act, can be decided in terms of the compromise.

2. The undisputed facts are:--

The petitioner has been a tenant of the shop situated in Bazar Bilari, District Moradabad at monthly rent of Rs. 210/- since 1977.

3. The respondent-No. 3 after terminating the tenancy filed J.S.C.C. Suit No. 24 of 1983 against the petitioner for ejectment and arrears of rent and damages for use and occupation. After contest, the suit was decreed on 5-1-1988.

4. The petitioner filed revision under S. 25 of Small Cause Courts Act.

During the pendency of the revision, the parties entered into a compromise. A compromise application dated 7-12-1988 duly signed by both the parties and verified by respective counsel, was filed before the revisional court. The contents of the compromise application, are not relevant at all for this court.

5. The revisional court vide order dated 7-12-1988 while rejecting the said application, held:

"The compromise cannot form a part of decree as no decree is prepared in revision. Rejected."

Thereafter on 10th March, 1989 the revision was dismissed on merits.

6. Technically, the order dated 7-12-1988 may be correct that compromise cannot form part of the decree as no decree is prepared in revision. This order seems to have been passed on account of wrong prayer made in the compromise application. The main question before the revisional court was whether revision could be disposed of in terms of the compromise or not.

7. To decide this controversy, this court has to look into the provisions of S. 25 of Small Cause Courts Act, and provisions of CPC to the said proceedings.

8. Section 25 of Small Cause Courts Act, reads as under:

"25. Revision of Decrees and orders of court of Small Causes:

The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

9. The scope of S. 25 is practically settled now in view of series of decisions of the Supreme Court as well as of this Court. The case of Laxmi Kishore v. Har Prasad Shukla, reported in 1979 ACJ 473 is authority for this purpose.

10. There is no dispute that under the said provision the revisional court has to see whether a decree or order passed by Judge Small Causes was in accordance with law or not. For this purpose, he may call for record of the case and pass orders as it may think fit. It is the supervisory power and not the appellate one, which is exercised by the revisional court.

11. Now the question is whether the provisions of O.23, R. 3 or the principles thereof are applicable to the proceedings under S. 25 of Small Cause Courts Act.

12. Section 7 of CPC mentions about the provisions which are not applicable to the courts constituted under provisions of Small Cause Courts Act, which reads as follows:--

"7. Provincial Small Cause Courts:

The following provisions shall not extend to courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887), (or under the Berar Small Cause Courts Law, 1905) or to Courts exercising the jurisdiction of a Court of Small Causes (under the said Act or law) (or to courts in any part of India to which the said Act does not extend exercising a corresponding jurisdiction) that is to say:--

- (a) so much of the body of the code as relates to -
 - (i) Suits excepted from the cognizance of a Court of Small Causes:.
 - (ii) the execution of decrees in such suits;
 - (iii) the execution of decrees against immovable property; and
- (b) the following sections, that is to say -

Section 9,

Sections 91 and 92

Sections 94 and 95 (so far as they authorise or relate to -

- (i) orders for attachment of immovable property,
- (ii) injunctions,
- (iii) the appointment of a receiver of immovable property, or
- (iv) the interlocutory orders referred to in clause (e) of S. 94.

and

Sections 96 to 112 and 115."

13. Order 50 of C.P.C. excludes, certain provisions of the schedule appended from the purview of Small Causes Court. For ready reference, this order is reproduced below:--

Order

"Provincial Small Cause Courts:

The provisions hereinafter specified shall not extend to courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887) (or under the Bearar Small Cause Courts Law, 1905) or to Courts exercising the jurisdiction of a Court of Small Causes (under the said Act or law) (or to courts in any part of India to which the said Act does not extend) exercising a corresponding jurisdiction) that is to say -

- (a) so much of this schedule as relates to -
 - (i) suit excepted from the cognizance of a court of small causes or the execution of decrees in such suits.
 - (ii) the execution of decrees against immovable property or the interest of a partner in partnership property;
 - (iii) the settlement of issues, and (b) the following rules and orders;

Order 11, Rule 1 (frame of suit) Order X, Rule 3 (record of examination of parties)

Order XV except so much of R.4 as provides for pronouncement at once of

judgment;

Order XVIII, Rules 5 to 12 (evidence),

Orders XLI to XLV (appeals),

Order XLVII, Rules 2, 3, 5, 6, 7 (review)

14. The provisions of S. 7 and O.L of the CPC excludes the provisions of schedule relating to settlement of issues and of O. X, R. 3 and also O. 18, Rr. 5 to 12 which lay down the procedure for recording evidence. The position is that the Court of Small Causes need not settle issues as is done in regular Courts. Order XVIII Rule 8 provides for recording of memorandum of substance of the deposition. This provision applies to the Court of Small Causes. They are also to record substance of deposition of the witnesses. Their judgment may contain only points or determination and actual decision thereon. The decision is made final subject to the decision in revision under S. 25.

15. Without any difficulty it can be pointed out that O.23, Rule 3 have not been excluded from its application to the provisions of Small Cause Courts Act. In my opinion the reason is quite obvious. Order XXIII, Rule 3 of Civil Procedure Code, reads as follows:

"Compromise of suit

Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties) or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order suit agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.)

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question, but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment)."

16. The object of this provision is that in case the Court is satisfied that the parties have entered into a lawful agreement, the litigation must come to an end. The parties should not be unnecessarily involved in litigation, which not only causes inconvenience to them, but also consumes money as well as time. Sometimes, it leads to creation of bad blood amongst the parties.

17. Counsel for the parties could not place any authority either of this Court or of the Supreme Court on the question involved in this case.

18. Had there been any intention on the part of the legislature to exclude the

application of the provisions of O. XXIII, R. 3 in revisions, then an indication should have been made in the order itself.

19. There is another point which gives me support in holding that O. XXIII, R. 3 is application. The intention of the legislature in introducing O. XXIII, R. 3 was to minimise the litigation. The Court has to determine the intention of the legislature as expressed by the words used in the Statute, and also by taking into consideration the object for which the enactment was done. The subject of O. XXIII, R. 3 was to minimise the litigation and the parties may live in peace. There should not be any difficulty in applying the same principle to the litigations which come to court under the provisions of Small Cause Courts Act. If a narrow view is taken to this proposition it will result in defeating the obvious purpose of the said provision of law. Law cannot be static and its interpretation has to be dynamic.

20. This court, on being fully satisfied, holds that the provisions of O. XXIII, R. 3 are applicable to revisions also in as much as when the application has not been excluded by means of S. 7, O. L, C.P.C. it is the duty of the court, to see, that in case the parties entered into a lawful compromise which is not otherwise forbidden by any law, the case is decided in terms of the compromise.

21. In this connection, reference may be made to S. 17 of Small Cause Courts Act, which reads as under:

"17. Application of the Code of Civil Procedure:

The procedure prescribed in the Code of Civil Procedure, 1908, shall save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and to all proceedings arising out of such suits;

Provided that an applicant for an order to set aside a decree passed ex party or for a review of judgment shall, at the time of presenting his application either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed."

22. The scheme in S. 17 of Small Cause Courts Act as well as scheme of CPC mentioned earlier, do not give any indication that the application of O.23, R. 3 has been excluded, nor any provision of law has been shown to me on the basis of which it could be said that the provisions of O.23, R. 3 are not applicable to the proceedings under Small Cause Courts Act.

23. Reference may also be made to the question of admission of additional evidence in revision. Order 41, R. 27, C.P.C. runs as follows:--

"27. Production of additional evidence in Appellate Court:

(1) The parties to an appeal shall not be entitled to produce additional evidence,

whether oral or documentary in the appellate court. But if -

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or -

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court the court shall record the reason for its admission."

24. A perusal of this provision shows that additional evidence can only be accepted by Appellate Court. It has not given any power to the Revisional Court to accept additional evidence, but in the case of *Zabardin Vs. Raghunath Prasad, , and Mohd. Sabir v. Mohd. Husain* reported in 1979 ALJ 1065 it has been held that additional evidence can be accepted even in revision. The idea behind these decisions is that procedural technicalities should not come in the way of justice. This analogy also helps in taking the view that compromise can be entered into before the revisional court and the revision can be disposed of in accordance with the same.

25. Since the matter of compromise is not before this Court, no order can be passed in that regard. Accordingly, the order of the revisional court dated 10-3-1989 is quashed and set aside, and the case is remanded to IIIrd Additional District Judge, Moradabad to dispose of the revision in terms of the compromise within a month from the date of presentation of a certified copy of this order.

26. The parties are free at any stage of litigation to compromise the matter.

27. Order accordingly.