

(2016) 03 AHC CK 0127
In the Allahabad High Court
Case No : Civil Revision No. 120 of 2012.

Om Sai Sahkari Samiti Limited	Vs	APPELLANT
Ram Het (Adopted) s/o Sri Narena and Others		RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2016) 5 ADJ 206 : (2016) 4 AllWC 3423 : (2016) 117 ALR 194 :
(2016) 2 ARC 101 : (2016) 132 RD 390 : (2016) 2 RJ 1021

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : S.N. Tiwari, P.N. Saksena and S.K. Tiwari, Advocates, for the Appellant; Raj Singh and Rishikesh Tripathi, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Pramod Kumar Srivastava, J. - Heard learned counsel for the revisionist. None was present for the respondent at the time of hearing.

2. This revision has been filed against the order dated 25.01.2012 passed by Ist Addl. District Judge, Gorakhpur, in Civil Appeal No. 122/2010 (Ram Het v. Shyam Lal and others) by which application 12-Ga of appellant (/plaintiff) under Order-VII, Rule-11 CPC for amendment in plaint of original suit was allowed.

3. Original suit number 8/1997 and original suit number 1065/2005 were consolidated. In original suit contra claim was also failing by the defendants. Trial court had decided on the both suits by common judgement dated 10.05.2010, by that suit was dismissed but counter claim was allowed. In this judgement that was a specific finding of fact after trial Court that defendant is owner in possession of disputed property. Against this judgement of trial Court civil appeal number 122/2005 was preferred. In this appeal the plaintiff plant had moved application 12-Ga under Order 7, Rule 11 , CPC, for amendment in plaint, for inserting pleading to the effect that during pendency of appeal has respondent

had taken position of disputed property from appellant, writ should be the removed and plaintiff be restored its possession.

4. The lower appellate court had accepted the objection 16-C against the said application of plaintiff-appellant, afforded opportunity of hearing and thereafter passed impugned order dated 25.01.2012 by which application 12-Ga under Order-VII, Rule-11 CPC was allowed. Aggrieved by this impugned order dated 25.01.2012 of the trial court, the respondents of Civil Appeal No. 122/2010 had preferred present revision.

5. Learned counsel for the revisionist contended that impugned order has been passed without considering defect and circumstances of the matters, the without appreciating the findings of trial Court and the without application of judicial mind. He contended that original suit is barred by principles of res-judicata, as findings of fact relating to disputed points in it had already been decided earlier litigation. He contended that this order is nothing but the misuse of the process of the Court; therefore it should be set aside.

6. A perusal of impugned order makes it clear that lower appellate Court had passed a sketchy, unclear, vague and superficial order without considering the merits of the matter and facts of the case, and pending as well as already finally decided dispute between the parties. In this order neither facts of the dispute were mentioned, nor objection of the respondent were discussed or taken into account.

Lower appellate Court had not even properly discussed as the why of amendment is being allowed at post hearing stage. Lower appellate Court had not given any finding to the effect that proposed amendment is necessary for determining the real dispute between the parties. Apparently impugned order is passed without application of judicial mind, and without taking into consideration the matters in dispute.

7. In Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 Hon"ble Apex Court had held as under:

"It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it.

Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with

objectivity. The absence of reasons renders an order indefensible/unsustainable, particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision-making. The person who is adversely affected must know why his application has been rejected."

8. In *State of Uttaranchal v. Sunil Kumar Singh* AIR 2008 SC 2026 Hon"ble Apex Court had held :

"Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made."

9. In *Paul George v. State* 2002 Cri. L.J. 996 Apex Court had held :

" - - - We feel that whatever be the outcome of the pleas raised by the appellant on merit, the order disposing of the matter must indicate application of mind to the case and some reasons be assigned for negating or accepting such pleas. We find total absence of the same in the order passed by the High Court quoted in the earlier part of this judgment. As a matter of fact, says nothing except that no illegality, impropriety or jurisdictional error was found in the judgment of the Courts below. Then abruptly order "Dismissed" is passed. It is submitted that probably the revision has been disposed off by the High Court having the provisions of Section 115, C.P.C. in mind since the order observe about "no jurisdictional" error having been committed by the Courts below."

"- - - The order impugned however does not indicate any trace of application of mind on the facts or the pleas raised before the Court. We would like to point out that we come across with such orders quite frequently as of now. There is no need to emphasise that the reasons, howsoever brief they may be, are to be indicated in an order disposing of any matter, moreso when such orders are subject to appeal or review before the higher forum. In many decisions of this Court, no doubt while dealing with orders passed in exercise of administrative or quasi-judicial power in those cases, it has been observed that so as to indicate application of mind, the orders should contain some reasons which also helps to the appellate or revisional authority to appreciate the merit of the orders passed and the way the decision has been arrived at."

10. In present case, if the impugned order is allowed to stand, it may have effect of disposing off point in dispute over which a decision had become final between the parties in earlier decided suit and proceedings relating to rights of revisionist; so there are chances that it would occasion irreparable loss or any failure of justice to him; because the defendants-revisionist will not get opportunity to disprove the plaintiff-appellant's case brought by amendment and get the matter decided on its merits. The trial court had ignored these facts before passing the

impugned order. Therefore passing of nonspeaking, unreasoned impugned order without properly appreciating the facts of the case amounts to exercise of jurisdiction by lower appellate court with material irregularity and illegality.

11. Therefore, for the reasons discussed above, revision succeeds. The impugned order dated 25.01.2012 passed by Ist Addl. District Judge, Gorakhpur, in Civil Appeal No. 122/2010 (Ram Het v. Shyam Lal and others) is set aside. The matter is remanded back to lower appellate court with direction to afford fresh opportunity of hearing to parties, and decide application 12-Ga of appellant (/ plaintiff) under Order-VII, Rule-11 CPC by well reasoned order, after application of judicial mind.

12. Let e copy of this order, and records, be sent back to lower Court immediately.