

(2008) 12 UK CK 0040
In the Uttarakhand High Court

Omveer Singh

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6
Provincial Small Cause Courts Act, 1887 — Section 15

Citation : AIR 2009 Utt 55 : (2009) 1 UC 572 : (2009) 1 UD 25

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.

in this case.

2. 1. A very short, but interesting question of law, is involved for consideration. The petitioner herein was a defendant in a civil suit filed by respondent No. 3 plaintiff u/s 15 of the Provincial Small Cause Courts Act, 1887, wherein, respondent No. 3 had sought eviction of the petitioner from the property in question. Even though initially petitioner-defendant had appeared in the said suit, but since long he chose to remain absent, the suit proceeded ex parte against the petitioner and ultimately ex parte decree was passed against the petitioner by the learned Trial Court on 6-5-1993. On 12-5-1993, the decree sheet was drawn up, which as per established practice, procedure and law, contained statement of costs borne by the parties. The operative part of the ex parte judgment dated 6-5-1993, undoubtedly and admittedly did not contain any order or direction with respect to the payment of costs. Even though decree sheet was drawn up based upon the aforesaid judgment on 12-5-1993 and even though it also contained tabular statement with respect to the costs incurred by the respective parties, it did not contain any direction or order about the liability to pay the costs.

3. Aggrieved by the ex parte decree dated 6-5-1993, the petitioner-defendant filed an application for setting aside the ex parte decree In terms of Order 9 Rule 13 C. P. C. and the Trial Court vide its order dated 11-11-1993 allowed the said application and set aside the ex parte decree subject to the condition of the petitioner-defendant depositing the decretal amount. It is undisputed case of type parties that pursuant to this order, the petitioner defendant had deposited an amount of Rs. 5,490/-, which was, in fact, the decretal amount. Consequent upon the petitioner defendant having deposited the aforesaid amount, he filed an application in the Trial Court for consequential implementation of the order dated 11-11-1993 for setting aside the ex parte decree. In this application, respondent No. 3 plaintiff filed his objection stating therein that the order dated 11-11-1993 could not have been implemented because the petitioner defendant had not deposited the entire decretal amount inasmuch as even though he had deposited Rs. 5490/-, since he had not deposited the costs of the suit as had been reflected in the decree sheet, this amounted to non-compliance of the order dated 11-11-1993. Based upon this objection of respondent No. 3 plaintiff, the learned Trial Court vide its order dated 26-12-1993 rejected the petitioner's application for implementation of the order dated 11-11-1993 agreeing with the contention-objection of respondent No. 3 that since the petitioner had failed to deposit the costs of the suit, he had failed to comply with the direction relating to the deposit of the decretal amount vide the Court order dated 11-11-1993. Aggrieved by this order, the petitioner filed a revision petition before the learned District Judge, who while dismissing the same vide his order dated 26-2-1994, concurred with the view of the learned Trial Court by holding that, indeed, because of the failure of the petitioner to deposit the amount of costs, he had not complied with the direction contained in the Court order dated 11-11-1993.

4. In the present petition filed under Article 226 of the Constitution of India, the petitioner has challenged the aforesaid order of the learned District Judge.

5. The decree sheet does indicate in the tabular form, the costs incurred by the parties. Whereas the column of costs against the plaintiff shows that the plaintiff had incurred Rs. 443/- as costs, in the column relating to the defendant, the costs amount shown is Rs. 55.50.

6. Section 35 C.P.C. reads thus:

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.

7. Order 20 Rule 6 C.P.C. reads as under:

6. Contents of decree.-- (1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom and out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

8. A combined reading of Section 35 and Order 20 Rule 6 C.P.C. does clearly stipulate that irrespective of the fact whether the Court while deciding the suit, awards costs or does not award costs, the decree shall state the amount of costs incurred in the suit and depending upon a direction contained in the judgment by whom or out of what property or what proportions such costs are to be paid, reflect the same in the Decree.

9. Mr. Alok Singh, learned Senior Counsel appearing for respondent No. 3 contended that Sub-section (2) of Section 35 stipulates a contingency where the Court deciding not to award costs in a suit, the Court has to state its reasons in writing for not awarding costs. By implication, according to Mr. Alok Singh, it means that if no reasons have been stated in the judgment disposing of the suit, it should be presumed and inferred that the Court intended to award costs in favour of the plaintiff in the suit. Based on what is clearly contained in Sub-section (1) of Section 35, I cannot persuade myself to agree with the aforesaid contention of Mr. Alok Singh, learned Senior Counsel for the simple reason that Sub-section (1) clearly lays down that the awarding of the costs in a suit shall be in the discretion of the Court and the Court has been conferred full and absolute power to determine by whom, out of what property, and to what extent the costs are to be paid. Not only that, Sub-section (1) further goes on to say that after such determination the Court has to issue necessary directions for the aforesaid purpose. What, therefore, clearly emerges from a plain and bare reading of Sub-section (1) of Section 35 is that whenever the Court intends to determine and decide that costs in a suit have to be paid by a party, say, the defendant, it has to first determine this fact and thereafter, to give an appropriate direction for the said purpose. What, therefore, follows is that in a Judgment, if no such direction has been issued by the Court because no such determination has taken place, irrespective of the fact that the judgment is silent about the incidence of costs, it shall be presumed that the Court did not intend to determine the costs aspect and also, therefore, did not intend to issue any direction about the payment of costs by any party. In other words, omission to state in the judgment anything about the payment of costs would give rise to a presumption and the drawing of

an inference that the Court neither intended to award costs to any party nor issued any direction to that effect. In other words, what the Court actually intended was that the parties were left to bear their own costs. Yes, Sub-section (2) does say that where the Court directs that any costs shall not follow the event, it is required to state its reasons in writing. Failure to state reasons, as stipulated in Sub-section (2) of Section 35 may be an irregularity, but what effect it will have over the judgment or its validity is a question with which we are not concerned in this case.

10. In the present case, admittedly, the ex parte judgment dated 6-5-1993 did not contain any direction about the payment of costs by anybody, the mere fact that the decree sheet contained a tabular statement about the costs incurred by the plaintiff and the defendant, did not mean that the petitioner was liable to pay the costs amount, the same being treated as a part of the decretal amount. I have no doubt in my mind that in the facts and circumstances of the case, the amount of costs as found a mention in the tabular statement in the decree sheet did not and could not form part of the decretal amount because Court had not ordered it to be so.

11. Both the Courts, therefore, patently erred in taking the view that because the decree sheet had contained the tabular statement about the costs, the petitioner was liable to pay the costs amount.

12. For the aforesaid reasons, this petition is allowed. The impugned orders are set aside. With the result and consequence, the ex parte judgment and decree dated 6-5-1993/12-5-1993 shall stand set aside. With the further consequence and result that the suit on being revived shall start from the stage ex parte proceedings against the petitioner had been initiated.

13. Since the suit is almost two decades" old and is still at the very threshold, I have no doubt in my mind that very, very expeditious disposal of the suit is in the interest of the parties.

14. While transferring this suit to the Court of Civil Judge (Junior Division), Roorkee from the file of Judge, Small Cause Courts, Roorkee, I direct the transferee Court to take all possible steps, after registering it as a Civil Suit, to ensure that the suit is disposed of very very expeditiously.

15. The parties, through their learned Counsel, are directed to appear in the Court of Civil Judge (Junior Division) Roorkee on 7-1-2009.