

(1999) 06 OHC CK 0035

In the Orissa High Court

Case No : Civil Revision No. 216 of 1997

O.T.A. Falloons Forwarding Pvt. Ltd.

APPELLANT

Vs

L.M. Hati and Company and Others

RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 2, Order 12 Rule 3A, 151

Citation : (1999) 88 CLT 213

Hon'ble Judges : D.M. Patnaik, J

Bench : Single Bench

Advocate : Bijan Ray, for the Appellant; K.N. Jena, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Patnaik, J.—The Defendant No. 1 in a suit for recovery of money against it, is in revision challenging the order - II dated 25-8-1997 of the Civil judge (Senior" Division), Jagatsinghpur passed in, Money Suit No. 69 of 1986 refusing its prayer to recall the order dated 16-10-87 and expunge the documents marked as Exts. 1 to 40 at the instance of the Plaintiffs on admission as per Order XII, Rule 3(A), Civil Procedure Code.

2. The Plaintiffs filed a suit against the Defendant No. 1 for recovery of about rupees three lakhs. The Defendant No. 1 filed written statement delaying the liability. Issues were settled. It was fixed for peremptory hearing on 16-19-1987. On 16-10-87 the Court recorded that none from the side of the Defendants was present. It further recorded that as per its previous order 23-6-87 since the Plaintiffs had already served notice on the Defendants" for admission of the documents as provided under order 12, Rule 3(A), CPC and that in spite of the notice when Defendant No. 1 did not turn up the court marked "the Plaintiffs" documents Exts. 1 to 40 on admission as permissible under those provision. After examination of p. w. I, on 8-8-87 the Defendant No. 1 filed an application to expunge those documents marked Exts. 1 to 40 from the evidence on the ground that he had not received any notice nor he admitted the documents and

that the Plaintiffs were to prove the documents. The Court passed the order on 25-8-97 rejecting the prayer and hence the present revision.

3. Heard Mr. Bijan Ray, learned Counsel for the Petitioner and MT.K. N. Jena, learned Counsel for the opposite parties-plaintiffs.

Mr. Ray has strenuously urged firstly that no notice as required under Order XII, Rule 2, CPC was served by the plaintiffs on the Defendant No. 1 and in any case according to the learned Counsel, "the Court should have given an opportunity of hearing before marking those documents as exhibits on admission.

Mr. Jena, on the other hand, submits that the impugned order marking these documents as exhibits on admission only can be construed as dispensing with the formal proof of the documents and there is no bar for the Plaintiff to challenge the recitals or contents thereof which he can do either when the Plaintiffs' witnesses were examined or by adducing any rebuttal evidence. Mr. Ray countered this submission of Mr. Jena and submitted that once the documents are marked as exhibits on admission, the, party against whom the documents are admitted in evidence cannot challenge the contents thereof.

4. I have heard the submissions of both the counsel and have gone through the records of the money suit in question as well as the impugned order.

On going through the order-sheet of the record, I find that on 23-6-87 the Plaintiff filed certain documents as per list with a petition prayer to accept them and with list of witnesses and another petition under Order XII, Rule 3(A) CPC read with Section 151, CPC to mark the documents as exhibits admission. The Defendant prayed for time for hearing of the suit. The court recorded to have heard the advocates for both parties and allowed time till 16-7-87 for hearing of the suit and further directed the parties to come ready. The case was there after posted to 1-7-87 and thereafter to 16-7-87 when both parties applied for time separately and time was granted till 15-9-87. On 15-9-87 though the Plaintiff filed Hazira of his witnesses, the Defendant No. 1 sought for adjournment on the ground of Defendants suffering from heart ailment. Reluctantly however the court granted time till 16-10-87" directing the parties for hearing of the suit "peremptorily". This order was apparently passed in presence of the counsel for the Petitioner. The court on that day in the middle part of the order recorded as follows:

..However both the parties are directed to come prepare to admit or refuse the documents which can be taken into evidence on admission on the day so fixed for hearing and to this no objection is also offered by either party. In the back ground of the fact that the counsel for the Defendant Mr. Mohanty submits that he would turn up ready on, the next day and the suit be posted for peremptory hearing it would be just and proper not to impose cost upon the Defendants for such adjournment.

On 16-10-87 the Plaintiffs were present with two witnesses but the Defendants"

counsel Mr. R.N. Mohanty filed a petition stating that another Advocate namely Shri Ranjit Ray would conduct the case and since the latter was ailing at Calcutta, an adjournment was prayed for which was vehemently objected to by the counsel for the Plaintiffs on the ground that the petition was filed mainly to delay the proceedings. The Court rejected the petition and directed the case to be put up at 3.00 p. m. for hearing when both parties to be ready. At the adjourned time the Defendant did not turn up. Plaintiffs' witnesses were present. The Court recorded that as per the previous order dated 23-6-87 since the Defendant No. 1 was caned up to either refuse or admit the documents under Order 12, Rule 3(A) and the court further held that notice under that order has been served and the Defendant did not turn up to object, this amounted to willful refusal and neglect to admit the same. Therefore, the court observed that the service of the notice under order, XII, Rule 2 CPC in form No. 9, Appendix VI was sufficient and admitted the documents in evidence.

5. On 24-10-87 the Plaintiff was present with three witnesses and the Defendant filed two petitions, one for recalling the order passed by the Court on 16-10-87 in accepting the documents under Order XII, Rule 3(A), CPC and the other for adjournment on the ground that the Defendant could not turn up to court for certain unavoidable circumstance. The court heard those petitions, gave its reasoning's that sufficient opportunity was given to the Defendant either to admit or refuse the documents, but the Defendant did not turn up. Therefore, the court rejected the petitions.

6. Having heard Mr. Ray, I am unable to accept the contention that the revision should be allowed.

It is well settled in law that scope of revision under the Criminal Procedure Code is absolutely limited to- the extent that this Court is only competent to exercise the provisional-powers in exceptional circumstances. In the present case as rightly pointed out by Mr. Jena there has been gross laches on the part of the Defendant in not responding to the directions of the court with regard to admission/refusal of the documents in question. The Defendant was present when the order dated 23-6-87 was passed and the Plaintiff filed the petition under Order XII, Rule 3(A), Civil Procedure Code, the copy was served on him. He was also present on 15-9-87 when the Court directed for peremptory hearing of the suit on 16-10-87. He was also present on 16-10-87 when the matter was called on for hearing but applied for time and remained absent on that day at 3.00 p. m. and was very much present on 24.10-87 when his prayer to recall the order dated 16-10.87 in admitting the documents was rejected. It is extremely surprising to note that in spite of so many opportunities and directions by the Court the Defendant did not raise any objection -not to admit these documents. Therefore, I cannot accept the contention of Mr. Ray that the Defendant had no notice under Order XII. Rule 2, Code of Civil Procedure. Even assuming that notice strictly in compliance with Order XII, Rule 2 or Rule 3(A), Civil Procedure Code. at the instance of the Plaintiff was not received by the Defendant, yet

nothing prevented the Defendant to file an objection to the petition of the Plaintiff dated 23-6-87, a copy of which was served on -the counsel for the Defendant as is indicated from the impugned order as well as from the petition itself showing the copy of the petition to have been received with objection. But no objection was filed. Even assuming this was not sufficient, yet the order of the court dated 15-9-87 which I have quoted above sufficiently gave notice to the Defendant as well as the Plaintiff to admit or deny either party's documents to be exhibited in the case on 16-10-87. The Defendant also did not avail this opportunity in spite of the direction of the Court. Therefore, the submission of Mr. Ray that there was no sufficient notice to admit or refuse the documents is wholly unsustainable.

7. That apart, the prayer was rejected as back as on 24-10-1987. The Defendant having approached this Court on 9-9-1997 i. e. long after ten years, the question of exercising provisional powers to set aside the order dated 16-10.1987 would only amount to abuse of the process of the court. There is no infirmity in the impugned order of the learned Civil Judge and therefore the revision petition has no merit.

The same is dismissed with cost of Rs. 1000/- (Rupees One Thousand) to the Plaintiff.

8. In the result, the revision petition is dismissed with cost.

Revision dismissed.