
(2014) 11 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 293 of 2014

Padam Dev

APPELLANT

Vs

Lachhmi Dass

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9
Constitution of India, 1950 — Article 227

Citation : (2014) 11 SHI CK 0014

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Ajay Kumar, Senior Advocate and Dheeraj K. Vashisht, Advocate for the Appellant; G.D. Verma, Senior Advocate and B.C. Verma, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—This petition under Article 227 of Constitution of India has been preferred by the plaintiff/petitioner against the order passed by the learned trial Court on 7.8.2014, whereby he has allowed the application of the defendant/respondent for appointment of Local Commissioner.

2. Undisputedly, the evidence of both the parties had been recorded and the case was fixed for arguments when the application for appointment of Local Commissioner came up for consideration, because it had been preferred prior to recording evidence. This application has been allowed in the following terms:-

"I have heard the submissions of learned counsels for the parties and I have perused the record of the case. It is clear that this application has been preferred by the applicant/defendant before leading evidence and after framing of issues. It was kept pending and now when the case is listed at the state of argument same is taken up for consideration on application. I find that the evidence has already been led in this case and if the commission is appointed as per prayer of the applicant, it will not cause prejudice to the parties, whereas it will definitely help for proper adjudication of the case. Therefore, after ignoring the objection, I

allow this application of the applicant in the interest of justice."

3. I am afraid that the manner in which the aforesaid application has been decided cannot be countenanced. It was not only imperative, but the law casts an obligation on the Court to record reasons for allowing or rejecting an application. In the case in hand the so called reason for allowing the application is that the application was allowed as it was not caused prejudice to the parties and would definitely help for proper adjudication of the case. Could it be held that allowing of the application would not cause prejudice to the parties especially when aggrieved by this decision, the plaintiff has been driven to this Court. Yet further could it be simply held that the appointment of Local Commissioner would definitely help for proper adjudication of the case without specifying as to how it would help the Court. Though, Mr. G.D. Verma, Senior Advocate would contend that the Court has power to appoint Local Commissioner even at the stage of second appeal or even when the matter is before the Hon'ble Supreme Court by way of SLP, if it is necessary for the proper adjudication of the case. There is no quarrel with this preposition so canvassed by Mr. Verma, but *sine qua non* for allowing such application would be that the Court deems the local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or other matters as contemplated in Rule 9 of Order 26 CPC. The learned Court below was, therefore, required to apply its judicious mind before allowing the application.

4. It is settled legal preposition that not only the administrative, but the judicial orders also must be supported by reasons recorded in it. Therefore, while deciding the application, the Court was bound to give its reasons for its conclusion. The legal position has been summed up by the Hon'ble Supreme Court in *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, in the following manner:-

"27. It is a settled legal proposition that not only administrative 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.

"3.....The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind."

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 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. [Vide: State of Orissa Vs. Dhaniram Luhar, ; State of Rajasthan Vs. Sohan Lal and Others, ; Vishnu Dev Sharma Vs. State of U.P. and Others, ; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Others, ; State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi, ; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta, ; Ram Phal v. State of Haryana (2009) 3 SCC 258; State of Himachal Pradesh Vs. Sh. Sada Ram and Another, ; and The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others, ."]

5. In view of the aforesaid exposition of law, the order passed by the learned Court below cannot be sustained and is accordingly set aside. The learned trial Court is directed to decide the application afresh after hearing both the parties. The parties through their counsel are directed to appear before the trial Court on 5.12.2014.

The petition is disposed of in the aforesaid terms, so also the pending application(s), if any.