

(2015) 07 SHI CK 0056

In the High Court Of Himachal Pradesh

Case No : OMP No. 131 of 2015 in C.S. No. 32 of 2014

Paras Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14(3), 151
Evidence Act, 1872 — Section 68
Succession Act, 1925 — Section 63

Citation : (2015) 07 SHI CK 0056

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : H.C. Sharma, for the Appellant; Meenakshi Sharma, Rupinder Singh, Addl. A.Gs. and Parul Negi, Dy. A.G., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Tarlok Singh Chauhan, J.

OMP No. 131 of 2015

1. This application has been preferred by the applicant/plaintiff for placing on record certain documents which include damage report and certain photographs. It is alleged that the applicant/plaintiff was prevented by sufficient cause in not filing the aforesaid documents at the time of filing of the suit because the same were prepared lateron. It is lastly averred that no prejudice shall be caused to the respondents in case these documents are taken on record and even otherwise the same are necessary for the just and proper decision of the case.

2. The respondents have filed the reply to the application and the main ground for opposing the application is that the application is belated and has been filed only to fill up the lacuna.

3. I have heard the learned counsel for the parties and have gone through the record of the case carefully.

4. No doubt, there has been some delay on the part of the applicant/plaintiff in filing the present application, but then the delay is only one of the factors which is required to be considered while deciding the instant application.

5. This Court in CMPMO No. 14 of 2015, decided on 19.06.2015, in case titled Neelam Kumari versus Yogender Singh and others, dealt with somewhat a similar issue wherein the applications moved by the petitioner therein for leading additional evidence and examining one of the parties in evidence was rejected only on the ground of delay and this Court held as under:

"7. It cannot be disputed that there has been inordinate delay on the part of the petitioner in filing the aforesaid applications. But can the rights of the petitioner be defeated only on account of there being delay in filing of the applications?

8. The proposition that Rules of Procedure are handmaid of justice and cannot take away the residuary power in Judges to act *ex debito justitiae*, where otherwise it would be wholly inequitable, is by now well founded.

9. It must be remembered that the Courts are respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so and further taking into consideration the fact that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done.

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

12. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

13. It is useful to quote the oft-quoted passage of Lord Penzance in 1879 (4) AC 504:

"Procedure is but the machinery of the law after all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve."

14. In the matter of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, AIR 1955 SC 425 : (1955) 2 SCR 1 , the Hon"ble Apex Court has observed as under:

"Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provide always that justice is done to both sides) less the very means designed for the furtherance of justice be used to frustrate it."

"Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course there must be expectations and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso our laws of procedure should be construed, wherever that is reasonably possible in the light of that principle."

15. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (See: Blyth v. Blyth (1966 (1) All E.R. 524 (HL)).

16. In Balwant Singh Bhagwan Singh and Another Vs. Raj Singh Baldev Kishen, AIR 1969 P&H 197 : (1970) 1 ILR (P&H) 229 it was held that:

"Promptitude and despatch in the dispensation of justice is a desirable thing but not at the cost of justice. All rules of procedure are nothing but handmaids of justice. They cannot be construed in a manner, which would hamper justice. As a general rule, evidence should never be shut out. The fullest opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process fee arises from negligence or carelessness."

17. In the matter of The State of Gujarat Vs. Ramprakash P. Puri and Others, (1969) 3 SCC 156 : (1970) 2 SCR 875 , the Hon"ble Apex Court has held that:

"Procedure has been described to be a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause."

18. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure

should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable.-Justice is the goal of jurisprudence- processual, as much as substantive. (See *Sushil Kumar Sen Vs. State of Bihar*, AIR 1975 SC 1185 : (1975) 1 SCC 774 : (1975) 3 SCR 942).

19. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See *Shreenath and Another Vs. Rajesh and Others*, (1998) 3 AD 624 : AIR 1998 SC 1827 : (1998) 3 JT 244 : (1998) 2 SCALE 725 : (1998) 4 SCC 543 : (1998) 2 SCR 709 : (1998) AIRSCW 1619 : (1998) 4 Supreme 155).

20. The Hon"ble Supreme Court in *R.N. Jodi and Brothers and Others Vs. Subhashchandra*, AIR 2007 SC 2571 : (2007) 4 CTC 326 : (2007) 9 JT 165 : (2007) 9 SCALE 202 : (2007) 6 SCC 420 : (2007) 8 SCR 241 : (2007) AIRSCW 4568 : (2007) 5 Supreme 458 , considered the procedural law vis-?-vis substantive law and observed as under:

"9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

21. Procedure is only handmaid of Justice:- All the rules of procedure are the handmaids of justice. Any interpretation which eludes substantive justice is not to be followed. Observing that procedure law is not to be a tyrant, but a servant, in *Sambhaji and Others Vs. Gangabai and Others*, (2009) 1 CLR 388 : (2009) 240 ELT 161 : (2008) 15 SCALE 322 : (2008) 17 SCC 117 , the Hon"ble Supreme Court held as under:

"6.(14) Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

22. In *Rajendra Prasad Gupta Vs. Prakash Chandra Mishra and Others*, AIR 2011 SC 1137 : (2011) 112 CLT 66 : (2011) 2 CTC 463 : (2011) 1 RCR(Civil) 801 : (2011) 1 SCALE 469 : (2011) 1 SCR 321 : (2011) AIRSCW 1318 , the issue before the Hon"ble Supreme Court was as to whether an application will be maintainable before the trial Court to withdraw the application filed earlier for withdrawal of the suit. The trial Court dismissed the application as not maintainable. The High Court held that once the application for withdrawal of the suit is filed the suit stands dismissed as withdrawn even without there being any

order on the withdrawal application and as such another application at a later point of time to withdraw the suit was not maintainable. When the matter was taken up in appeal, the Hon"ble Supreme Court disagreed with the views expressed by the High Court. While allowing the appeal, the Hon"ble Supreme Court observed thus:

"5. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted."

23. The Hon"ble Supreme Court in Mahadev Govind Gharge and Others Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, AIR 2011 SC 2439 : (2012) 113 CLT 414 : (2011) 6 JT 100 : (2011) 8 SCR 829 : (2011) 5 UJ 2835 : (2011) AIRSCW 3220 : (2011) 3 Supreme 665 , reiterated the legal position regarding procedural law and observed:

"28. Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold....."

24. In view of the aforesaid exposition of law, it can safely be concluded that the learned trial Court erred in dismissing the applications solely on the ground of delay without taking into consideration the humanist rule that procedure should be the handmaid, not the mistress of legal justice and it always vested with the residuary power to act ex debito justitiae where otherwise it would be wholly inequitable. Apart from that, learned trial Court has completely misconstrued the provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act."

6. Bearing in mind the aforesaid exposition of law, it can safely be concluded that though the delay in filing of the application can be one reason, but not the sole reason on the basis of which the application of the present kind can be dismissed

7. That apart, a perusal of the reply filed by the respondents would reveal that the respondent has nowhere alleged that any prejudice much less serious prejudice has been caused to him and the same has only been opposed on the ground of delay.

8. This Court in Braham Dass Vs. Onkar Chand and Another, (2009) 1 ShimLC 339 has held that there was no specific bar to produce documents even at the stage of final hearing with the leave of the Court and until and unless a serious prejudice is caused to the other side, the same must be permitted to be produced. It is apt to reproduce paras 8 and 9, which reads as under:

"8. The documents are ought to be produced in Court by the plaintiff when the plaint is presented or to be entered in the list to be added or annexed to the plaint, however, the documents can be produced subsequently with the leave of

the Court. Whether the documents are relevant or not could not be decided at the stage of considering the application under order 7 Rule 14(3) of the Code of Civil Procedure and this question was to be determined at the stage of arguments. The learned trial Court has also misconstrued the judgment rendered by the Hon''ble Supreme Court cited in the order. There is no specific bar to produce the documents at the stage of hearing with the leave of the Court. The Court endeavour must be to adjudicate the lis effectively and if certain documents could not be filed with the plaint until and unless serious prejudice is caused to the other side, the same must be permitted to be produced on record. The other party also gets an opportunity to rebut the evidence produced by the parties during the hearing. The Court has to exercise the jurisdiction for the production of the documents liberally.

9. It is settled principle that opportunity should be afforded to the parties to produce their evidence and state their case before the Court. The Court has to exercise the jurisdiction in favour of the production of the evidence instead of scuttling it. The Courts should not permit the parties to indulge in dilatory tactics to stall the proceedings. The Court has discretion and generally speaking it will be wise exercise of the discretion to permit the production of the evidence and the question is to be decided in each case in the light of the particular circumstances."

9. Every trial is a voyage of discovery in which truth is the quest. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth.

10. Therefore, taking into consideration all the facts and circumstances, the application is allowed and the documents accompanying the application are ordered to be taken on record and further the plaintiff is at liberty to lead evidence in support of the same. The application is disposed of.