
(1994) 12 AP CK 0026

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3662 of 1992

Progressive Packaging Pvt. Ltd. and Others

APPELLANT

Vs

Premier Suppliers Ltd.

RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 37 Rule 2, Order 37 Rule 3, Order 37 Rule 4, Order 37 Rule 7

Citation : (1995) 1 ALT 173 : (1995) 1 APLJ 187

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : A. Krishna Murthy and P. Nageswara Sree, for the Appellant; S. Balehand, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Raikote, J.—This is the defendants' revision petition challenging the order dated 26-9-1992 passed in I.A.No. 154 of 1992 in O.S.No. 648/1990 on the file of V Addl. Judge, City Civil Court, Hyderabad.

2. The learned Counsel for the petitioners strenuously contended that the impugned order passed by the Court below is illegal and without jurisdiction. He further contended that when summary procedure is invoked under Order 37 CPC the plaintiff could not have been allowed to produce documents under Order 13, Rule 2 C.P.C read with Section 151 C.P.C He further contended that Order 13, Rule 2 CPC does not apply to the facts of this case nor Section 151 C.P.C. could be invoked in the case, Therefore, the learned counsel for the petitioners strenuously contended that the impugned order is one without jurisdiction. He further submitted that when the respondent/plaintiff invoked the procedure under Order 37 CPC the proceedings have got to be completed only in accordance with this order and as such, Order 13, Rule 2 CPC is not available for the plaintiff to produce the documents. He also relied upon the decisions in Punjab and Sind Bank Vs. Ramji Das Khanna and Another, , P.N. Films Ltd. and

Another Vs. Overseas Films Corporation Ltd., : and Subash Raina v. Suraj Prakash, AIR 1977 J & K 30 and ultimately submitted that the impugned order is liable to be set aside.

3. The learned Counsel for the respondent/plaintiff supported the judgment and order of the Court below.

4. To appreciate the rival contentions of the learned Counsel appearing for both sides, it is necessary to note the brief facts of tills case. The parties will be referred to as they are arrayed in the suit.

5. The respondent/plaintiff filed a suit for recovery of an amount of Rs.5,21,416-32 ps. out of which Rs. 1,99,752-40ps. is towards interest outstanding as on 31-5-1990. The suit was filed by the plaintiff invoking the summary procedure under Order 37 C.P.C. The defendants, after service of summons, have entered into appearance and sought the leave of the Court to defend the suit by filing I.A.Nos. 1301 to 1104 of 1990. It is at that point of time, the respondent-plaintiff filed I.A.No. 154 of 1992 seeking the leave of the Court to produce certain documents with an application for condonation of delay. It is stated in the I.A. that the plaintiff was seeking permission of the Court to produce certain documents in view of the contentions raised by the defendants in the said I.As. seeking leave to defend the suit. The I.A.No. 154/1992 was opposed by the defendants on the ground that the documents could have been filed at the time of presentation of the suit and the plaintiff could not cure the defect this stage by filing the documents. They further contended that no reasonable cause is made out in not filing the documents at the time of presentation of the suit and there are laches on the part of the plaintiff and accordingly prayed that this I.A.No. 154/92 should be dismissed.

6. The Court below, after hearing both sides, has allowed I.A.No. 154/92 of the plaintiff by condoning the delay in filing the said I.A. imposing cost of Rs.50/- by passing the impugned order, which is questioned by the defendants in this revision.

7. The learned Counsel for the petitioners/defendants contended that the provisions of Order 13, Rule 2 CPC could not be invoked for production of the documents in view of Order 37, Rules 1 to 7 CPC which provide a special procedure for disposing of the suit by way of summary procedure when the same is so adopted by the plaintiff. Therefore the Court below could not have invoked the provisions of Order 13, R. 2 C.P.C. He further contended that Order 37 excludes the other provisions of C.P.C. His second submission is that under Order 37, Rule 3 CPC it is mandatory on the part of the plaintiff to send the plaint and annexures along with the summons to be served on the defendant. The phrase "Annexures thereto" means the suit documents. From a plain reading of Order 37, Rule 3 CPC it is clear that the suit document should be filed along with the plaint and copies thereof should be made available to the defendant along with the summons and in case, if that is not done, the suit is liable to be dismissed or

decreed only on the basis of the material furnished along with the plaint as annexures. Since there is a specific provision in Order 37, Rule 3 CPC in this behalf, Section 151 CPC also could not have been invoked. Therefore, he contends that the impugned order is liable to be set aside.

8. As against this argument, the learned Counsel for the respondent-plaintiff contended that by Rule 7 of Order 37 CPC the other provisions of CPC are made applicable regarding the matters which are not provided for in Order 37 C.P.C. Since there is no provision regarding the production of documents under Order 37 CPC Order 13, Rule 3 CPC is applicable. He further submitted that at any rate, Section 151 CPC was available to the Court. He further submitted that the impugned order being a discretionary order does not call for interference u/s 115 C.P.C.

9. I have given a very anxious consideration to the facts of the case.

10. In order to appreciate the rival contentions, I have to notice the sum and substance of Order 37 C.P.C. The procedure in Order 37 CPC is rarely invoked. Whenever such a procedure is invoked by the plaintiff under Rule 2 of Order 37 CPC the plaintiff shall present a plaint, which shall contain the averment that the suit is filed under this Order 37 CPC and the relief is claimed only regarding the matter within the ambit of Order 37 CPC under Rule 2 (2) of Order 37 CPC summons shall be taken to the defendant in Form No. 4 in Appendix B or in such other Form as may be prescribed from time to time. Under Rule 2 (3) of Order 37 CPC the defendant shall not defend the suit unless he enters an appearance and in case of default of his appearance, the decree could be passed as if the plaint averments are deemed to have been admitted. Under Rule 3 (1) of Order 37 CPC after receiving the summons, the plaintiff and annexures, the defendant at any time within 10 days of such service of summons, may enter into appearance by filing his address for service of notice on him. He shall at the same time notify his appearance to the plaintiff's pleader by delivering notice to him either in person or through the pleader. Under Rule 3 (4) of Order 37 CPC after such appearance by the defendant, the plaintiff shall serve on the defendant a summons for judgment in Form-IV-A of Appendix-B or such other Form as may be prescribed from time to time, returnable not less than 10 (ten) days from the date of service supported by an affidavit. Under Rule 3(5) of the said Order, the defendant may at any time within ten days from service of such summons for judgment may apply to the Court for leave to defend such suit and such leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just. It is further provided that such leave should not be refused unless the Court is satisfied that the facts disclosed by the defendant in his affidavit do not indicate that he has a substantial defence to raise or his defence is frivolous or vexatious. Under Order 37, Rule 3 (6) of C.P.C. in case such leave is refused by the Court, the plaintiff shall be entitled for judgment forthwith. If the defendant is permitted to defend as to the whole or any part of the claim, the Court may direct him to give such security within such time as

may be fixed by the Court and in case of his failure in furnishing such security, the plaintiff would be entitled to a judgment forthwith. Under Rule 3 (7) of Order 37 C.P.C. the Court may excuse the delay of the defendant in entering appearance or in applying for leave to defend the suit on sufficient cause shown by the defendant. If any decree is passed ex parte, the Court could set aside such ex parte decree and if necessary stay the execution of such decree under special circumstances.

11. We are not immediately concerned with Rules 5 and 6 of Order 37 C.P.C. Rule 7 of Order 37 C.P.C. which is relevant for the purpose of this case, may be extracted as under:-

"Save as provided by this Order, the procedure in suits here under shall be the same as the procedure in suits instituted in the ordinary manner".

12. From the substance of the provisions of Order 37 CPC that I have noted above, it is clear that in case of the defendant either failing to enter in appearance or whenever his leave to defend the suit is refused, there could be a decree forthwith. From these provisions, it is further clear that in case the plaintiff fails to fulfil any of the requirements of Order 37 of C.P.C. there is no provision that the suit shall be dismissed forthwith. In such a contingency, the said suit ceases to be a suit under Order 37 CPC for the purpose of summary procedure, and it may be treated like any other ordinary suit. This aspect of Order 37 C.P.C. I am noticing only to find out a hypothetical case where necessary annexures were not filed as required by Order 37, Rule 3 CPC or some other requirement of Order 37 is not complied with whether such a suit is liable to be dismissed. From the reading of Order 37 CPC it is clear that, that is not the intendment of the Legislature in enacting the summary procedure under Order 37 C.P.C. The object appears to be that wherever the plaintiff has invoked the jurisdiction of the Court under Order 37 CPC on certain material, which cannot possibly be disputed and only in such case where the defence set up by the defendant is vexatious or frivolous, there could be a decree forthwith, and nothing more. If for any reason, the procedure under Order 37 CPC could not be resorted to it is open to the Court to treat the suit as an ordinary suit. In fact, when the defendant is permitted to enter into defence under Rule 4 of Order 37 CPC except that he is directed to furnish security to the amount in dispute, the suit there after would go on like an ordinary suit. With this analysis of Order 37 CPC let me now examine the rival contentions of both sides.

13. The contention of the learned Counsel for the petitioners-defendants is that by virtue of Order 37, Rule 3 CPC the provisions of Rule 2 of Order 37 (sic. 13) CPC stands excluded. He submitted that the plaintiff shall enclose the necessary documents along with the plaint whenever he invokes the summary procedure under Order 37 CPC and such summons shall be delivered to the defendant along with the annexures thereto. He contends that the phrase "annexures thereto" means nothing but documents to be relied upon by the plaintiff.

14. I am afraid, it is very difficult to accede to the contention of the learned Counsel for the petitioners-defendants that the phrase "annexures there to" found in Rule 3 of Order 37 CPC means necessary documents to be relied upon by the plaintiff. The plaint may contain other annexures like the schedule of documents, schedule regarding the Court fee, etc. In the Civil Procedure Code, the suit documents are not treated as annexures to the plaint unless such document is treated as annexure. The intendment of Rules 2 and 3 of Order 37 CPC is that the plaint shall be accompanied with all the annexures of the plaint and these rules do not further contemplate furnishing the copies of documents to the defendant along with the summons. The same is the view of the single Judge of High Court of Delhi. Negating a similar contention in a reported decision in *Punjab and Sind Bank v. Seth Foller Flour Mills and Ors.*, AIR 1988 Delhi 308 the High Court of Delhi held as under:-

"The first contention of the defendants is that the documents which were basis of the suit had not been filed with the plaint and no copies thereof were supplied to the defendants, so much so that even a copy of the statement of account was not furnished to the defendants and as such leave to defend is sought. I have gone through the provisions of Order XXXVII of the CPC and I do not find anything therein which warrants that copies of documents which are basis of the suit have to be furnished to the defendants. The only requirement of Order XXXVII Rule 3 (1) of the CPC is that copy of the plaint and annexures there to has to be furnished to the defendants. It has not been shown that any of the documents which are basis of the suit or which have been filed by the plaintiff are annexure to the plaint. In view thereof, I do not find that the defendants are entitled to leave to defend on this ground".

15. However, the learned counsel for the petitioners-defendants sought support to his contentions from the Judgment of Bombay High Court in *P.N. Films Ltd. and Anr. v. Overseas Films Corporation Ltd.* (2 supra). That was a case in which the defendant was set *exparte* and he pleaded that the summons were not served on him, in so much so, the alleged summons appeared to have been pasted to the door of an address, which was incorrect and it appeared that even the annexures there to were not affixed along with the summons on the door of the house of the said address. The High Court of Bombay in those circumstances held that there was no proper and sufficient service on the defendant and accordingly set aside the *exparte* decree. In that decision they have not held that the annexures filed along with the plaint necessarily meant the suit documents. Therefore, that case is distinguishable from the facts of this case and it does not help the petitioners' contention.

16. Likewise, the other decision cited by the learned Counsel for the petitioners reported in *Punjab and Sind Bank v. Ranjit Das Khanna and Anr.* (1 supra) does not augment his arguments, since the same also pertains to the service of summons along with the annexures. There also, it is not the interpretation of that High Court that the word "annexures" found under Order 37 Rule 3 CPC

meant "documents". In fact, as pointed out by me earlier, the same High Court of Delhi held that the word "annexures" found under Order 37, Rule 3 CPC does not take within its ambit the "documents".

17. From the above discussion, it is clear that Order 37 Rules 2 and 3 CPC provided a procedure regarding the service of summons, that the plaint shall be accompanied along with the annexures. But under that order, there is no further procedure regarding the production of documents along with the plaint or any provision regarding the production of documents at a later stage. Whenever a specific procedure is not provided under Order 37 CPC by virtue of Rule 7 of Order 37 CPC the other procedure prescribed in the CPC is made applicable to the summary suits. Therefore, by virtue of Rule 7 of Order 37 CPC the provisions of Order 13, Rule 2 CPC are made applicable to such summary suits. In other words, the procedure prescribed under Order 37 is only in modification of the procedure prescribed in other part of the CPC and it is not to the exclusion of the same. In so far as a special procedure is provided under this Order 37 CPC the other provisions to this extent only stand modified and in all other respects, the other provisions of CPC are applicable to the summary suits under Order 37 C.P.C. In other words, a plaint shall fulfil the requirements of Order VII CPC in addition to the requirement provided under Order 37, Rule 2 CPC to the extent indicated therein. Therefore, if a person could not file certain documents in his possession along with the plaint as required under Order VII, Rule 14 CPC, still he could invoke the power of the Court for production of such documents under Order 13, Rule 2 CPC at the subsequent stage of the proceedings even when the summary procedure under Order 37 CPC is invoked. From this discussion, it is clear that the judgment of the High Court of Jammu & Kashmir relied upon by the learned Counsel for the petitioners in Subash Raina's case (3 supra) does not apply to the facts of this case. In the said decision, an application to set aside the ex parte decree was sought under Order 9 Rule 13 CPC with an application for condonation of the delay. The High Court of Jammu & Kashmir in the above decision pointed out that when there is a specific procedure prescribed under Order 37, Rule 4 CPC for setting aside the ex parte decree under "special circumstances", Order 9, Rule 13 CPC could not be invoked for setting aside such ex parte decree. But in the instant case, as I have already pointed out, there is no provision regarding production of documents, either along with the plaint or at a later stage under Order 37 C.P.C. Therefore, Order 13, Rule 2 CPC is applicable. Thus, the facts in the decision of High Court of Jammu & Kashmir in Subfish Raina's case (3 supra) are distinguishable from the facts of this case.

18. Of course, under Order 13, Rule 2 CPC the plaintiff shall make out a good cause" for such non-production at an earlier stage, to the satisfaction of the Court. In the instant case, the Court below has held that such a cause is shown on the basis of the affidavit filed by the respondent-plaintiff. The Court below observed that the suit was at a preliminary stage and the documents could be admitted by condoning the delay and if such delay is not condoned, the plaintiff would be put to loss and injury. However, the Court below awarded costs of

Rs.50/- for allowing the application.

19. Nevertheless, the impugned order of the Court below being a discretionary order does not call for interference u/s 115 of C.P.C. To the same effect is the ruling of the Hon''ble Supreme Court with reference to Order 37, Rule 3 read with Section 115 CPC reported in Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, . Thus, the order of the Court below does not call for interference. Hence, I dismiss the revision petition, but in the circumstances of the case, without costs.