

(2009) 09 AHC CK 0048
In the Allahabad High Court

Radha Soami Satsang Sabha

APPELLANT

Vs

Agam Adhar Sinha and Others

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 148

Citation : (2009) 09 AHC CK 0048

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This is an unfortunate case.

2. Suit No. 1 of 1943 is still pending. It has already travelled at least four times to the Apex Court and number of times to this Court.

3. There is apparently no progress in the said suit on account of tenacity and ingenuity of the parties so far.

4. The Apex Court, in its desire to do complete justice between the parties, permitted the plaintiff to amend the plaint and take the written statements of the defendants on the record with the hope that the litigation will come to an end with promptitude. This was done way back on 21-10-1965 in civil appeal No. 385 of 1965 Radhasoami Satsang Sabha v. Dr. Umrao Raja Lal and Ors. connected with civil appeal No. 666 of 1965 Radhasoami Satsang Sabha v. Smt. Puttan and Ors.. The Apex Court framed as many as 49 issues mentioned in Schedule "A" of the judgment and directed the trial court to set down the hearing of the issues in question at an early date and after the evidence has been recorded, the trial court should make its own findings and submit the same to the High Court.

5. Since then, more than four decades have passed, but there is no appreciable progress in the suit.

6. Again the Apex Court in SLP (Civil) No. 1387 of 1983 by its order dated

25-3-1983 directed that the suit shall be taken up for hearing immediately, be heard from day-to-day and that it shall be disposed of without granting adjournment on frivolous grounds.

7. The applicant belied the hope of the Apex Court and got the proceedings of the suit stalled by filing the above revision in the year 1985 and obtained an interim order staying further proceedings in the suit.

8. The above revision has been filed against the order dated 25-2-1985 passed by the IInd Additional Civil Judge, Agra taking the written statement filed on behalf of defendants No. 23 and 32, who are President and Secretary of Central Administrative Council, on record, after rejecting the objections raised by the present applicant who is plaintiff in suit No. 1 of 1943.

9. Shorn of unnecessary details, the relevant facts for the purposes of disposal of the present revision, may be noticed in brief. There are two factions, Dayalbagh group and Soami Bagh group of the same religion known as "Radhasoami Faith". Suit No. 1 of 1943 was filed by Radhssoami Satsang Sabha against the Trustees of Soami Bagh group (defendants). In the said suit, the trustees were impleaded as defendants in their individual capacity initially. The suit was heard and decided and was decreed in part on 5-7-1961. This led to filing of two first appeals. First appeal No. 239 of 1961 was filed by Soamibagh group while the first appeal No. 301 of 1961 was filed by Dayalbagh group. These appeals are still pending in the High Court. During the pendency of the aforesaid appeals, the stay order was vacated by the High Court and it allowed execution of the decree. In the meantime, certain members expired and Central Administrative Council passed a resolution suspending Radha Swami Trust and taking the management of the property in its own hand. An application for impleadment of the members of the Central Administrative Council (hereinafter referred to as CAC) was filed in the appeal which was rejected and the matter reached to the Apex Court and the Apex Court allowed the civil appeal with the consent of the counsel for the parties and provided as follows:

(1) To file application for amendment of the plaint for addition of members of Central Administrative Council as parties and

(2) Thereafter two weeks time to the newly added defendants to file their written statements.

10. It may be placed on record that the plaint was got amended and the written statements of the members of CAC were taken on record.

11. Thereafter, an application under Order 1 Rule 8 CPC was filed by the plaintiff to permit Bhai Lal Patel, President of CAC and Dr. B.P. Saxena, Secretary of CAC to defend the suit in representative capacity. The said application was dismissed by the trial court but was allowed by the High Court in civil revision No. 325 of 1983. The judgment of the High Court is reported in Radhaswami Satsang Sabha Vs. Smt. Puttan (deceased by L.Rs.) and Others,

12. In SLP No. 5465 of 1984 which was dismissed by the order dated 1-5-1984, the Apex Court has held that the High Court was right in allowing the plaintiff's application made for leave under Order 1 Rule 8 CPC. It provided that since the members of the Council were not impleaded, all that is required to be done, they will have to be served with writ of summons in the representative capacity which the plaintiff will do within a period of two weeks from that day. Members of the Council in their representative capacity if they want to file the written statement, they should do it within two weeks thereafter and trial shall proceed day to day.

13. After the aforesaid order of the Apex Court, the plaintiff took out the summons on the defendants. The defendants No. 23 and 32 are the President and Secretary respectively of CAC and the plaintiff desired to continue the suit against them in their representative capacity representing the entire body of CAC. These two persons filed an application for taking their written statements in their representative capacity as President and Secretary of CAC, on record. They contended that the nature of the suit has been changed to a representative capacity and they are filing their written statements in official capacity, notwithstanding the fact that they had earlier filed their written statements before the Apex Court being the members of CAC. In reply, all possible arguments were raised by the plaintiff applicant to the application for taking the written statement on record. The trial judge, after discussing each and every aspect of the case, placed before it, by order under revision, ordered that the written statements filed by the President and Secretary in their official capacity may be taken on record. The said order is under challenge in the present revision.

14. Sri Umesh Chandra, learned Senior Counsel on behalf of the applicant submits that the written statements of the defendants are already on record as they were filed before the Apex Court. If the present written statement is taken on record, it might require framing of additional issues in the suit, which according to him, is not possible. Elaborating the arguments, he submits that since the Apex Court itself has framed 49 issues, this impliedly restricts the power of the trial court to frame any other issue even if so required notwithstanding. The main thrust of the argument is that the said written statement was not filed within two weeks from the date of order of the Apex Court as was provided therein and the trial court could not extend the time for its filing. He also contends that on a true and correct interpretation of the order dated 1-5-1984 of the Apex Court, the members of the CAC in their representative capacity were required to file the "written submission" and not the "written statement". Attempt to point out distinction in between "written submission" and "written statement" was made to buttress his argument.

15. Pith and substance of the argument is that the written statements on behalf of the defendants were filed before the Apex Court and as such, there was no occasion for these two defendants, who are the office bearers, to file another written statement in their official capacity. Time for filing the written submission was specified by the Apex Court which could be extended by the Apex Court only

and not by the trial court. The trial court, thus committed illegality in taking the written statement beyond the time prescribed by the Apex Court.

16. Sri Navin Sinha, learned senior counsel assisted by Sri Vipin Sinha, Advocate, on the other hand, submits that initially the suit was filed against the members of CAC in their individual capacity. In other words, CAC was not made a party in the suit. At the subsequent stage of the suit i.e. in the afore stated two first appeals, CAC was sought to be impleaded as defendant in the suit. The matter travelled to the Apex Court in civil appeal Nos. 383 of 1965 and 666 of 1965 which was decided, as already noted above, with the consent of the parties and the members of CAC were permitted to file their written statement to amended plaint and 49 issues were framed. The occasion to file the written statement in their official capacity as defendants No. 23 and 32, President and Secretary of CAC respectively arose when after passing of the aforesaid order by the Apex Court, the suit was permitted to be converted into a representative suit by granting permission under Order 1 Rule 8 CPC. It was the Apex Court, while upholding the order granting relief under Order 1 Rule 8 CPC, provided that the members of the council in their representative capacity, if they want to file written submission, they should do so within a period of two weeks. The Supreme Court directed that writ of summons in representative capacity be taken out within two weeks from the date of the order and provided for filing of written submission within two weeks thereafter. The contention of the learned Senior Counsel is that the word "written submission" as a matter of fact herein means "written statement". The stage of filing a written submission would arise only when the suit is ripe up for hearing after recording the evidence etc. and not anterior to it. There is no provision for filing of "written submission" in CPC and therefore in the context of the present case, it should be read and understood as "written statement". So far as non filing of written statement within the prescribed period of two weeks is concerned, the learned Senior Counsel submits that even the summons which were required to be taken out by the plaintiff within a period of two weeks were not taken out within the prescribed period. The plaintiff cannot take advantage of their own wrong. The contesting defendants are entitled in view of plain language of Order 1 Rule 8(5) CPC to file the written statement in their official capacity as they are responsible and answerable to the members of CAC. It was further submitted that no new plea has been sought to be raised but it is, as a matter of fact, in a condensed form of various written statements filed by the members of CAC in their individual capacity, already on record. Maintainability of the present revision on the ground that the order under revision does not amount to a "case decided" within the meaning of Section 115 CPC, was also put forward.

17. Considered the respective submissions of the learned Counsel for the parties and perused the record.

18. Relevant facts have been noticed above with some details. The suit, as has been pointed out, was initially filed only against the members of CAC, impleading

them in their individual capacity. CAC was not made a party in the suit. At the subsequent stage of the suit, permission was sought for and was granted to convert it in a representative capacity suit under Order 1 Rule 8 CPC. The grant of said permission was subject matter of consideration by the Apex Court. The Apex Court, while upholding the order of the High Court, passed the following order on 1-5-1984:

We do not think it is necessary for us to interfere with the order of the High Court. The High Court was right in allowing the plaintiff's application made for leave under Order 1 Rule 8 of C.P.C. Since the members of the council are already impleaded, all that is required to be done, they will have to be served writ of summons in the representative capacity which the plaintiff will do within a period of two weeks from today. The members of the council in their representative capacity, if they want to file written submissions they should do so within a period of two weeks thereafter and the trial should proceed day to day.

Special leave petition is disposed of accordingly.

19. The controversy in the present case centres round upon the interpretation of expression "written submission" as occurred in the above order. The bone of contention of the learned Senior Counsel for the applicant is that there is well known distinction in between "written submission" and "written statement". Reference was made to dictionary meaning of "submission". There being no quarrel, it is not necessary to dwell upon this point any further. The question which falls for consideration is whether the phrase "written submission" used in the afore stated order should be read as it is or it should be interpreted and understood in the factual background of the case. Time and again, it has been laid down that a word used in a judgment should not be interpreted like a statute. If there is any doubt about the use of expression in a judgment, resort to background fact is permissible. Keeping the above principle in the background of the mind and taking into consideration the factual matrix of the case, the purport, intent and tenor of the word "written submission" in the order of the Apex Court is that it has been used in the sense of "written statement". Any other meaning or in other words, the strict dictionary meaning does not fit in the facts of the case. By way of repetition, it may be added here that the said order was passed by the Apex Court while upholding the validity of the order granted under Order 1 Rule 8 CPC. In the earlier part of the order, the plaintiff was required to serve the writ of summons in the representative capacity. Ordering the issuance of summons was not a merely formality. The object of serving a summon or notice is to call upon that party to place his case in reply/defence. Undoubtedly, these two persons were impleaded initially being the members of CAC, but even then it was considered fit to implead CAC in the representative capacity as body of the entire members. The President and Secretary are required to defend the suit in their official capacity being President and Secretary of CAC and as such, are entitled to file the written statement in that capacity, otherwise there would be violation of principle of natural justice. On the one

hand, these persons were impleaded in their official capacity and by denying them not to file the reply (written statement) in their official capacity, would amount condemning them in their official capacity without permitting them to put their defence.

20. It may be noticed that the occasion for filing the written statement in their official capacity arose only when the permission under Order 1 Rule 8 CPC was granted. Learned Senior Counsel for the parties referred Order 1 Rule 8 CPC. Learned Senior Counsel for the applicant submits that since their written statement being members of CAC is already on record and Order 1 Rule 8 CPC does not contemplate filing of any written statement and as such, no written statement can be taken on record. The said argument has got no substance. Order 1 of the First Schedule of CPC deals with "parties to suit". It does not provide the filing of plaint or written statement. The provision for filing of pleadings generally has been made under Order 6 of CPC. Ample power in representative suit has been given to the court to substitute any person suing or defending and not proceeding with due diligence, to substitute in his place any other person having same interest in the suit. Order 1 Rule 9, sub rule (6) provides that a decree passed in a representative suit shall be binding on a person on whose behalf or for whose benefit the suit is instituted or defended, as the case may be. This provision is also indicative of the fact that in such suit, the decree is binding even on a person who is not a party to the litigation. This being so, a more onus/duty has been cast on the court to see that such a suit is proceeded with due diligence.

21. The other facet of the submission of the learned Senior Counsel for the applicant that all the defendants have same interest in the suit, therefore, the filing of the written statement by the office bearers of CAC in their official capacity is not required, is equally without substance. A person may have several capacities. He may be father, may be son, may be brother, a Member, a Secretary or President of a body. Order 1 Rule 8 CPC nowhere restricts filing of written statement by the office bearers of a body in their official capacity when the said body is sued or being sued as such.

22. It is apt to reproduce issue Nos. 4, 5 and 42 as framed by the Apex Court, germane to the present controversy:-

4. Is this suit maintainable without any leave under Order 1 Rule 8 of CPC either with regard to the plaintiffs or with regard to the defendants?

5. Is this suit bad for non impleading all members or followers of the Dayal Bagh Group and for having been instituted without leave under Order 1 Rule 8 C.P.C.?

42. Were the members of Central Administrative Council necessary parties when the suit was filed?

23. Framing of the aforesaid issues also supports the view which I intend to take in the present revision that filing of the written statement on behalf of Bhai Lal

Patel, President of CAC and Dr. B.P. Saxena, Secretary of CAC to defend the suit in representative capacity is required. The tenor of the order of the Apex Court dated 1-5-1984 does not run counter to the above view, rather it supports it.

24. The other limb of the argument of the learned Senior Counsel for the applicant is that the said written submission at all could have been filed within a period of two weeks, the time specified for filing of written submission by the Apex Court and not afterwards.

25. Reliance was placed on a judgment of this Court in Allahabad Development Authority v. Saiffudin and Ors. AIR 1999 All 40. Interpreting Section 148 of CPC it has been held therein that the word "court" used in Section 148 means the court which passed an order and fixed a date for a particular act and not any other court much less the sub-ordinate court.

26. Noticeably, the summons etc. which were required to be taken out by the present applicant within the specified period of two weeks, were not taken out. The plaintiffs did not adhere to the fixed time schedule. This being so, the court below was perfectly justified in taking the written statement on record, even after two weeks. It may be noted that the consequence, if any, for not filing of the written statement within a period of two weeks has not been provided in the order of the Apex Court. The trial court has noticed that the defendants have filed the written statement only after taking out the summons by the plaintiffs. The defendants have prayed for condonation of delay in its filing. The trial court has held that the action of the defendants is bonafide and there is no malafide on their part, has condoned the delay. I see no justification to interfere with the impugned order which is equitable and legally justified also. So far as the judgment relied on the case of Allahabad Development Authority (supra) is concerned, it has no application to the facts of the case in as much as the consequence for not fulfilling the condition within the specified time was provided for. The order was peremptory in nature which is not so here. The applicant is also equally responsible for not complying with the order of the Apex Court.

27. The other facet of the argument of the learned Senior Counsel for the applicant is that the Supreme Court had remanded the matter back to the trial court, after framing issues etc. and, therefore, the trial court is bound by the order of the Apex Court. In other words, it could not travel beyond the scope of the order of the Apex Court and, therefore, could not take the written statement not filed within the specified time, on the record, has got no substance.

28. Reliance was placed by him on following decisions wherein it has been held that the order of remand passed by a superior court is binding on the subordinate court:

1. Allahabad Development Authority v. Saiffudin and Ors. AIR 1999 All 40.
2. The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy,
3. Smt. Ramabai and Others Vs. Harbilas and Others,

4. Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another,

29. There appears to be no quarrel to the above proposition of law. But, these cases have hardly any application herein and are distinguishable on facts and law. In the present case, the Apex Court has itself permitted the parties to amend their pleadings and it itself framed 49 issues for decision by the trial court. The decision on these issues will facilitate the disposal of the above two first appeals pending in this Court. Meaning thereby, till date there is no decision on the above issues on merits and in that sense it cannot be said that the matter has been remanded back with certain directions to reconsider and redetermine any question either of law or fact. To my mind, the broad proposition, as canvassed by the learned Senior Counsel for the applicant, on the facts of the present case, is not applicable. The suit is still its infancy. The evidence is required to be led by the parties and *denovo* trial in the light of 49 issues framed by the Apex Court is to take place. This being so, the above proposition as canvassed by the learned Senior Counsel for the applicant will not be applicable, the issues being new issues and having not been decided earlier in particular.

30. The argument of the learned Senior Counsel for the opposite parties that the present revision is not maintainable, has got substance. The court below, by the order under revision, has taken the written statement on record. Apparently, no prejudice has been caused to the plaintiff applicant herein. None of the rights of the parties have been adjudicated upon by the order under revision. It does not amount a "case decided" within the meaning of Section 115 of CPC. Moreover, the said Section has been amended as its applicability in Uttar Pradesh which provides further that the High Court or the District Court shall not vary or reverse any order including an order deciding an issue, made in the course of suit or other proceeding except where (i) the order, if so varied or reversed would finally dispose of the suit or other proceedings, or (ii) the order, if allowed to stand cannot occasion failure of justice or cause irreparable injury to the party against whom it was made.

31. The proviso as inserted by U.P. Act No. 17 of 1991, referred to above, is fully attracted and as such, no interference u/s 115 CPC is called for. By varying or reversing the order, it would not finally dispose of the suit or other proceedings. Nor, if the order is allowed to stand, would occasion failure of justice or cause irreparable injury to the applicant.

32. The applicant, in rejoinder, did not prefer to give any reply to the question of non-maintainability of the revision. This is an additional reason not to interfere in the present revision.

33. Before saying *omni* to the case, it is apt to reproduce the order of the Apex Court dated 25-3-1983 passed in SLP (Civil) No. 1387 of 1983:

The acrimonious litigation between persons professing a certain religious faith shows how religion is more often preached than practised. The suit is pending since 1942 and every effort is made by the two warring camps, each describing

itself to be intensely religious to see that the suit does not come to a successful termination. This is inspite of the order dated 7-5-1982 and the subsequent orders passed by us that the suit shall be disposed of within six months from the date of that order. One round of litigation was taken to the Privy Council. Now in this suit, interlocutory orders are challenged from time by filing appeals, revisions and what not. This is now the third round of litigation before this Court. The expedient, which is now resorted to by the petitioner, is that a certain order passed on interrogatories is challenged, which was first challenge in the High Court of Allahabad where the civil revision petition was pending for 12 years since 1971. We hope that wiser counsel will prevail over the parties and the suit allowed to proceed. We direct that the suit shall be taken up for hearing immediately, be heard from day-to-day and that it shall be disposed of without granting adjournment on frivolous grounds.

With these observations, the SLP is dismissed.

34. Viewed as above, there is no merit in the present revision. It is dismissed with costs of Rs. 10,000/-. (Rs. Ten Thousand only). The parties to the suit as well are reminded about the orders dated 23-3-1983 and 1-5-1983 by the Apex Court for expeditious disposal of the suit and that trial should proceed day to day.