

(1997) 04 AHC CK 0125

In the Allahabad High Court

Case No : Civil Revision No. 518 of 1994

Rajesh Chhapai Udyog and Another

APPELLANT

Vs

Punjab National Bank and Another

RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 2, Order 5 Rule 6, 115

Constitution of India, 1950 — Article 227

Citation : (1997) 04 AHC CK 0125

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : A.K. Yog and J.J. Munir, for the Appellant; K.L. Grover, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—This revision application is directed against an order dated 20th September, 1994 passed by the IIIrd Additional Civil Judge, Gaziabad, in O. S. No. 912 of 1988. The suit was filed by the Respondent-Punjab National Bank, against the present revisionists and others for recovery of certain sum of money. During the pendency of the suit, the Defendant-revisionists had filed an application before the trial Judge under Order XI, Rules 1 and 2, CPC for answer of certain interrogatories on affidavits. That was objected to by the Plaintiffs. The matter was heard and the prayer was rejected by the impugned order dated 20th, September, 1994. This order is now under challenge u/s 115 of the Code of Civil Procedure

2. Pressing the revision application, Sri J.J. Munir submitted that according to the plaint case certain sum of money was taken on loan from the bank by the Defendants and there was a stipulation that bills payable to the Defendants would be sent to the bank who would encash the bills and adjust the sums under the bills towards the loan and interest. It was alleged that certain bills were not

at all accounted for by the bank and the interrogatories were directed only against those bills to know whether the bills were encashed and, if so, whether the sums were adjusted against the dues from the Defendants.

3. A reading of the impugned order indicates that the Defendants had at an earlier stage of the proceedings in the suit, filed an application under Order V, Rule 6, CPC for further details and this application was dismissed on 21.3.1991 and the court was of the view that the present prayer was nothing but a renewal of the earlier prayer in disguise. The court was of the view that while interrogatories were permissible to clarify the nature of the claim of one party, those were not meant to bring on record evidence and thereby to shift the onus of proof.

4. In support of this application, Sri J.J. Munir relied on a decision of the Orissa High Court in Tata Iron and Steel Co. Ltd. Vs. Rajarishi Exports (P) Ltd., , It was held herein that the rejection of a petition requiring the Plaintiff to answer interrogatories was a case decided and as such was revisable u/s 115. CPC Reliance was placed on another decision in AIR 1978 Cal 284. In tills case, a Division Bench of the Calcutta High Court had explained the meaning of the expression "any case which has been decided". It was held that direction for production of documents was also an order to come under the above expression. In this very context, reference was made by Sri Munir on a decision in AIR 1986 Del 289. It was observed by the Delhi High Court that after the amendment of 1976 introducing the proviso to Section 115, indicating the conditions under which the High Court would be competent to vary or reverse an order of the court below, "to add any further clarification to the expression "case decided" would no longer seem to be necessary". Reference was made in this case to the aforesaid decision of the Orissa High Court also.

5. Sri Munir contended that when it is a case decided, this Court gets the power to revise the order. Sri K.L. Grover. appearing for the Respondents, relied on a decision of the Allahabad High Court as in AIR 1980 All 265. It was a case where the court below had refused to grant leave to a party to deliver interrogatories. The Allahabad High Court, in this case, held that the order was not a "case decided" within the meaning of Section 115, Code of Civil Procedure

6. Of the four decisions quoted before me, the Allahabad decision is a binding precedent and the dictum therein must, therefore, be accepted in preference to the decisions given by other High Courts. The problem can also be seen from another angle. It was the defence that certain bills were sent to the bank for encashment and for adjustment towards dues of the Defendants. The Defendants wanted through the present set of interrogatories an answer from the Bank as to what happened to those bills. In my view, the Defendant, in support of the claim of the set off, was to prove the tender of the bills to the Bank and if that was done, his onus was discharged and the onus would then have shifted to the Bank to show whether the said bills were encashed and the sums were adjusted or if the bills were not encashed and what consequential action was taken by the

Bank. The interrogatories, as rightly interpreted by the court below, were meant to compel the Bank to bring on record certain evidence which was not the purpose of Order XI, Code of Civil Procedure

7. In addition to the arguments that were advanced on the point of interpretation of Order XI, Rules 1 and 2 and Section 115, Code of Civil Procedure, Sri Munir also submitted that Article 227 of the Constitution of India could always be invoked if the statutory remedies were not sufficient to give relief to a party, Article 227 of the Constitution of India gives power of superintendence with the High Court over the courts below. I am of the view that when a statutory provision is there, the power of superintendence is to be exercised through those statutory powers otherwise Article 227 may take such a proportion that all other statutory provisions would become unnecessary and any relief could be sought from the High Court through Article 227 only in exercise of its power of superintendence. In my view, the present application for revision has no merits and it accordingly stands dismissed.