
(1986) 10 MP CK 0034

In the Madhya Pradesh High Court

Case No : Second Appeal No. 305 of 1973

Ramesh Chandra and Others

APPELLANT

Vs

Rameshwardayal

RESPONDENT

Date of Decision : 30-10-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 18 Rule 2, Order 18 Rule 2(4)

Constitution of India, 1950 — Article 14, 226, 39A

Citation : AIR 1987 MP 110

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.N. Singh, J.—This is defendant's appeal, who lost in both the Courts below. The short point urged in this appeal is that the defendant's right to fair trial having been infringed the decrees of both Courts below are rendered nullity by Article 39A of the Constitution.

2. The plaintiff based his suit on a Hundi for a sum of Rs. 4,000/-. Defendant's case was that he had not borrowed any amount on the basis of that Hundi but admitted that the amount, which was kept in deposit with him was "black money" and to evidence the deposit the Hundi was executed. It was his further case that the amount was returned by him and the plaintiff was not entitled therefore to claim decree against him for any sum or any account. Shri Tomar, who appears for the defendant-appellant, has made a short submission drawing my attention to certain peculiar but crucial features of the case,

3. the fact of the matter which is admitted at the Bar is that after the plaintiff-respondent closed his evidence and defendant entered upon his defence, he examined himself on 4-2-1967 in part. There were several dates in the case to which hearing was adjourned thereafter from time to time. However, on 12-8-1968, an application was filed by the defendant for further adjournment of

the case submitting that the case was fixed for evidence of defendant's side and the defendant proposed to examine several witnesses in support of his case. However, the witnesses, among others, a clerk of the State Bank of India, refused to give evidence without being summoned by the Court. It was also submitted in that application itself that defendant's examination-in-chief had still to be completed and his further examination be resumed after evidence of Hand-Writing Expert to be examined by him. The application was rejected on the same date, namely, 12-8-1968; and on the very same date defendant's case was closed and arguments were heard reserving final orders. The short question is whether this could be done legally and if not whether the judgments and decrees passed by both the Courts below can at all be sustained in law.

4. Order 17, Rule 1, C.P.C. empowers Court for "sufficient cause" being shown to adjourn hearing of the suit from time to time. Sub-rule (2) of Rule 2 of Order 18, C.P.C. envisages; that after defendant has adduced his evidence he may then address the Court generally on the whole case to which the plaintiff may reply generally on the whole case. Sub-rule (4) of Rule 2 of Order 18, C.P.C. further envisages that for reasons recorded the Court may "direct or permit any party to examine any witness at any stage." Shri Tomar has drawn my attention to certain documents which appear on the record and are nothing but two pass-books of certain bank accounts. His contention is that defendant was shut out from proving his case in violation of Sub-rule (2) of Rule 2 of Order 18, C.P.C. His further contention is that the sufficiency of the cause shown by the defendant for the prayer for adjournment, in his application dt. 12-8-1968, has not at all received due consideration of the trial Court.

5. Reliance is placed by the learned counsel on a decision of Gauhati High Court in the case of Rajat Hirabhai Motibhai and Others Vs. Deputy Collector, Land Acquisition and Rehabilitation, Panam Project, Godhra and Others, ; wherein it was held that it is the duty of the Court to consider the sufficiency of the cause for which an adjournment, was sought and that this is the minimum requirement of the rule of fair trial. Each party has a right to demand reasonable opportunity to prove its case though none has the right to stagger or stall the progress of the suit without reasonable or "sufficient cause". My attention is also drawn to the view taken by me, sitting in this Court, in the case of Brijendra Singh 1986 (3) MPWN 111, wherein it was held that when a last chance was given to a party to adduce evidence it will be well within the jurisdiction of the Court to refuse to grant adjournment. Unfortunately, in this case, the admitted position is that at no stage prior to 12-8-1968 any order was passed by the trial Court to indicate that defendant was given "last chance" to adduce his own evidence or that of any witness he wanted to examine in support of his case so that his case could be deemed to be validly closed under Sub-rule (2) of Rule 2 of Order 18, C.P.C.

6. Counsel for the plaintiff-respondent, Shri J. P. Sharma, has relied on a decision of this Court in Munshiram 1981 (1) MPWN 138, wherein it was held that adjournment may be refused when process fees as ordered are not paid and

witnesses as ordered are not kept present in Court. I do not read anything in this decision which runs counter to the view taken by me in Gunchand's case (supra) or even in the case of Brijendra Singh (supra). On the other hand, I am inclined to take the view that even in the decision cited the requirement of fair trial was not over-looked and therefore a warning by the Court to the party to keep witnesses present was envisaged. That apart, the question of sufficiency of cause would evidently be a question of fact depending on the circumstances of each particular case and this principle is not countered by Munshiram (supra).

7. Let me now look at the impugned order. It is not disputed that on two grounds defendant's prayer for adjournment was refused and his case was treated as closed and he was asked to address the Court by advancing arguments. Firstly, because costs ordered on 3-4-1968 had not been paid. Secondly, because on that date itself there was also a direction to the parties to produce witnesses in the Court for examination. What bears emphasis in this context is the fact that neither on 3-4-1968 nor on 24-6-1968, which were the two dates preceding the date of the impugned order, parties or even their counsel were not at all present in Court. Thus, it passes my comprehension how the defendant alone could be penalised for his alleged default in compliance of the Court order to pay costs to the plaintiff or for not producing witnesses in support of his case. That apart, what appears significant in this case is that there is a stale ground also on which the impugned order is based. The trial Court took the view in the impugned order that on 29-1-1968 parties were ordered to pay process fees and that requirement had not been fulfilled. There is also a reference in the impugned order to a medical certificate which the defendant produced in support of his case of illness which had prevented him from taking steps in the matter but it was rejected on the short ground that it bore no date.

8. That the statutory requirement germane to the provision of Order 17, Rule 1, C.P.C. is wholly absent in this case in the impugned order is very much manifested in the face of the order. Where is, indeed, consideration in the order of defendant's submission that his part-examination was still to be completed? Indeed, if the Court was not prepared to allow the defendant to examine other witnesses in support of his case rejecting prayer in that regard, a direction could have been made allowing the defendant himself to come into the witness box for completing his examination and thereby allowing the minimum and reasonable or "equal opportunity" to prove his own case as envisaged under Article 39A of the Constitution. There is no consideration of the prayer made in the application that his part-examination be resumed after the Hand-Writing Expert was examined. Further, if for the proof of the case of the defendant evidence of any witness in relation to the pass-books filed in the suit was required, the Court could have very well exercised its powers under Sub-rule (4) of Rule 2 of Order 18, C.P.C. On the face of the order it is not manifested that these considerations at all weighed with the Court when the case of the defendant was abruptly closed, indeed without any "last-chance" order passed on an earlier date. I have no hesitation at all, therefore, to take the view that

defendant's application filed on 28-9-1968 was illegally rejected, which has resulted in failure of justice in this case rendering the trial illegal and indeed unconstitutional under Article 39A which ensures the "right to fair trial" to every litigant.

9. For all the foregoing reasons the judgments and decrees passed by both the Courts are set aside and the suit is remitted for retrial. The appeal is allowed but there shall be no order as to costs in this Court. All orders passed in this appeal of interim stay of any return are vacated.

10. Records shall be sent down at once. Parties shall appear in the trial Court on 12th Nov., 1986. On that date itself defendant shall produce his witnesses in Court but it shall still be open to him also to take steps on that date to take out summons for examination of official witnesses. Within three months, after hearing parties and taking evidence, the suit shall be disposed of.