
(2016) 05 GAU CK 0004
In the Gauhati High Court
Case No : C.R.P. No. 484 of 2010

Rekha Devi

APPELLANT

Vs

M/s Mother India Logistic & Minerals Pvt. Ltd.

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Citation : (2016) 164 AIC 632 : (2016) 4 GauLJ 382 : (2016) 4 GauLT 395 : (2016) 3 NEJ 450

Hon'ble Judges : Mr. N. Chaudhury, J.

Bench : Single Bench

Advocate : Mr. M. Choudhury, Advocate, for the Appellant; None appears, for the Respondent

Final Decision : Allowed

Judgement

Mr. N. Chaudhury, J.(Oral)—Heard Mr. M. Choudhury, learned counsel for the petitioner. None appears for the opposite party although notices were duly served.

2. In this application under Article 227 of the Constitution of India, petitioner has challenged the order dated 2.9.2010 whereby the suit of the plaintiff has been dismissed under Order 17 Rule -3 (b) of the Code of Civil Procedure read with Order 17 Rule -2 of the Code. The suit was fixed for evidence on 2.9.2010 on which date the learned counsel for the plaintiff filed application for adjournment and having dismissed the application for adjournment, the learned trial court dismissed the suit as a whole as if the plaintiff was absent. Mr. Choudhury, appearing for the petitioner argues that on that date, the learned senior counsel could not appear because he was busy in arranging the marriage of his son. He engaged one of his learned juniors to file application for adjournment on this ground but the learned junior without examining g the records of the case, filed an application from his own stating that there was necessity for amending the plaint. Actually the suit was fixed for evidence on that date and there was no question of filing any amendment petition. The defendant also did not file any

application objecting to the application for adjournment but the learned trial court being of the view that there was no ground to adjourn proceeding under provisions of Order 17 in the present case, dismissed the suit in entirety.

3. Mr. Choudhury, learned counsel submits that even if the learned court wanted to proceed under Order 17, Rule 2 of the CPC, in that event he ought to have ascertained as to whether any of the claim of the plaintiff had been admitted by the defendant and if so under provision of Order 9, Rule 8 of the CPC, he ought to have decreed the suit with respect to the extent of admission. But the learned court has not applied mind in regard thereto and summarily dismissed the suit which is prima facie contrary to the provision Order 17, Rule 3 (b), Order 17, Rule 2 and under Order 9, Rule 8 of the CPC. He has drawn attention of the court to several paragraphs of the written statement to show that there is some indication as to admission made by the defendant. For example, in paragraph -4 of the written statement, the defendant has partly admitted the averment made in paragraph- 3 of the plaint. But in so doing has not specified as to which part of the claim has been admitted. Similarly, in paragraph-23 of the plaint, the plaintiff had furnished the details of the money claimed against the defendant but while dealing with this paragraph in paragraph-10 of the written statement, the defendant did not make any specific denial and under such circumstances, according to Mr. Choudhury, there is a deemed admission within the meaning of Order 8, Rule 5 of the CPC. That being the position, the learned trial court was duty bound to ascertain as to whether there was any admission really and if so to what extent and in that event the suit ought to have been decreed in so far as it relates to admission of the defendant. The impugned order, therefore, is vitiated for non-exercise of the jurisdiction under the aforesaid provision of law, Mr. Choudhury contended.

4. I have perused the LCR to see the averments made in the plaint and the written statement. The plaintiff has claimed to have business connection with the defendants for which he is entitled to certain amount of money and details thereof has been furnished in paragraph-23 of the plaint. Defendant has not denied the liability specifically or by necessary implication as required under Order 7, Rule 5 of the CPC. Rather in paragraph-4 of the written statement, the defendant has partly admitted the averments made in paragraph-3 of the plaint and under such circumstances, the business relation between the parties stood admitted. So, as submitted by Mr. Choudhury, it was necessary on the part of the learned trial court to see as to what extent the defendant had admitted claim of the plaintiff more so when there is no specific denial of the claim made in paragraph-23 of the plaint. The second limb of argument of Mr. Choudhury is that the plaintiff really did not make any prayer for amendment of plaint on the fateful day. Plaintiff was in need of an adjournment as the learned engaged counsel in the case was busy in arranging marriage of his son and so he instructed one of his juniors to file an application for adjournment stating this ground. The learned junior counsel in spite of making the correct averments in the application went through the earlier adjournment application whereby prayer

for amendment was made and copied the same in his adjournment application without keeping in mind that the earlier prayer for amendment had already been rejected by the learned trial court on the previous date.

5. Having considered the adjournment application as available on the records, I do not find any reason to disbelieve the learned counsel who had appeared himself before the trial court.

6. Having considered the aforesaid submissions and more particularly of the fact that the opposite party has chosen to stay away from the court and has not denied any of the averments made in the revision petition as stated above, this court feels that it is a fit case for exercising supervisory jurisdiction under Article 227 of the Constitution of India.

7. Accordingly, the application stands allowed. The order dated 2.9.2010 stands set aside. The learned court shall re-consider the whole aspect of the matter and shall pass a fresh order thereafter keeping in view the observations made herein above.

8. No order as to cost.

9. Send down the records.