
(1974) 02 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 856 of 1973

Rup Chand Dharam Chand, Kanpur

APPELLANT

Vs

Basant Lal Banarsi Lal, Dhuri

RESPONDENT

Date of Decision : 12-02-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 115

Citation : AIR 1975 P&H 171 : (1976) 1 ILR (P&H) 96

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Seth Bhagirath Dass, for the Appellant; Harbans Lal, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—In connection with certain contract for the sale of cotton by the plaintiff-respondent Firm to the defendant-petitioner, a suit was filed by the petitioner Firm at Kanpur on April 29, 1972, for the recovery of Rs. 2,125. Subsequently, on August 17, 1972, the respondent-Firm filed a suit for the recovery of Rs. 5,454.21 paise at Dhuri. In the suit filed at Kanpur, Dharam Chand described himself as the sole-proprietor of Messrs. Rup Chand Dharam Chand. The only defendant in that suit is the Firm Messrs. Basant Lal Banarsi Lal of Dhuri. In the suit filed at Dhuri by Messrs. Basant Lal Banarsi Lal, Messrs. Rup Chand Dharam Chand is the first defendant and one Hans Rai Sharma is arrayed as defendant No. 2. Whereas the Kanpur suit mentions the date of the contract in dispute as August 25, 1969, the relevant date cited in paragraph 3 of the plaint of this suit is August 23, 1969. The description of the goods and the rates etc. are, however, the same. In the suit filed at Dhuri, a sum of Rs. 64.07 has been claimed on account of the balance of some previous dealings in addition to the damages claimed for breach of the contract in dispute.

2. On the date fixed for filing the defendants' written statement, that is on January 15, 1973, the defendant-petitioner filed an application u/s 10 of the CPC

(without filing his written statement) for staying the Dhuri suit on the ground that the Kanpur suit had been instituted earlier and related to the same dispute. By his order dated April 20, 1973, Shri Sarwan Singh Chahl, Subordinate Judge First Class, Dhuri, dismissed the application of the petitioner on two grounds, namely, (i) that Exhibit D-2, the certified copy of the plaint of the Kanpur suit, had " not been properly proved; and (ii) that the application u/s 10 of the CPC could not be entertained before the written statements had been filed.

3. Mr. Harbans Lal, the learned counsel for the respondent submits that the certified copy of a plaint is not a public document and cannot prove itself by merely having been tendered in evidence. In this case, however, Dharam Chand had appeared as A.W. 1 and given a lengthy statement in the course of which he proved the certified copy of the plaint Exhibit D-2. The deposition of A.W. 1 has been scribbled by the learned Subordinate Judge in such a way that neither I nor my Reader nor any of the counsel for the parties has been able to decipher anything from the statement of A.W. 1-Dharam Chand. I was at one stage inclined to send for the learned; Subordinate Judge to see if he himself could read the same or not. In view, however, of the admitted fact that the certified copy of the plaint was proved in the course of the statement of A.W. 1 and not by having been merely tendered in evidence, I have not adopted that course. The application u/s 10 of the CPC was supported by the affidavit of Hans Rai Sharma, Exhibit B-3, on behalf of the defendant-petitioner. Mr. Bhagirath Dass, the learned counsel for the petitioner, says that Hans Rai Sharma was a mere representative of the petitioner and that even the respondents have referred to him in their plaint only as the person who talked to the respondents on telephone on behalf of the petitioner.

4. I am inclined to think that the certified copy of the plaint had been properly proved in this case by the statement of A.W. 1 and the learned Subordinate Judge had, therefore, no juris-diction to rule it out of consideration.

5. So far as the stage at which an application u/s 10 of the CPC has to be considered is concerned, it is not the universal rule that the application cannot be entertained before filing the written statement. Mr. Bhagirath Dass has relied on a judgment of the Calcutta High Court in S.K. Rungta and Co. (Jute and Seeds) Vs. Nawal Kishore Debi Prosad and Others, wherein it has been held that though normally the Court would not allow a party to move an application u/s 10 of the CPC unless he has filed his written statement, the Court would entertain an application of the defendant for stay in a case where he has annexed the copy of the plaint in the previously instituted suit and it can be found out from the copy of that plaint as to what the dispute between the parties is. Reliance was placed by the learned Judge of the Calcutta High Court on an earlier judgment (Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another,) of the same Court for that proposition. The plaint of the earlier suit was before the trial Court, and there could be no difficulty in finding out what was the real dispute between the parties. Even if the learned Subordinate Judge thought that

a perusal of the two complaints was not enough to find out whether the subject-matter of the controversy between the parties in the two suits was identical or not, he could have kept the application pending and could have taken it up for decision after getting the written statement of the defendant-petitioner filed, but he should not have dismissed the application at that stage. In fact, the defendant-petitioner has since filed his written statement dated May 16, 1973, in the Dhuri Court. The liability of the defendant-Firm to pay some little amount left as balance out of the transaction referred to in paragraph 2 of the plaint of this suit has not been disputed by the defendant-Firm. There is, therefore, no real dispute in regard to the petty claim of Rs. 64.07. The rest of the written statement relates to the contract in dispute.

6. Since both the grounds on which the order under revision is based have been found by me to be incorrect, it appears to me that the trial Court in this case refused to exercise jurisdiction vested in it by law to entertain and dispose of the application of the petitioner u/s 10 of the CPC on merits.

7. Mr. Harbans Lal, the learned counsel for the plaintiff-respondent, besides contesting the petition on merits, has also raised an objection to the maintainability of this petition for revision of the trial Court's order. He has referred to the judgment of a learned Single Judge of the Allahabad High Court in B. Ratan Chand Vs. Mst. Kalawati, , and argued that an order passed u/s 10 of the Code of Civil Procedure, is not a case decided and does not, therefore, attract the provisions of Section 115. There is a good deal of divergence of opinion on that question. The learned Single Judge who decided Bhola Prasad's case (supra) dissented from the earlier view expressed in AIR 1928 355 (Oudh) because of that view having been dissented from in Madan Mohan Vs. Kuar Kamla Narain Dube . The expression "case" is of much wider amplitude than the word "suit". Whereas the interlocutory order in a suit does not amount to a case decided, the final disposal of an application u/s 10 of the Code of Civil Procedure, does in my opinion amount to the decision of the lis between the parties under that particular provision. The decision of the application u/s 10 is not appealable and cannot possibly be re-opened in any subsequent proceeding. It is a final decision of the trial Court on the statutory right of a party to have the subsequently instituted suit stayed in certain specified circumstances. Such an order amounts to a case decided within the meaning of Section 115 of the Code, I am, therefore, of the opinion that if a Subordinate Court exercises its jurisdiction to stay a suit u/s 10 of the Code of Civil Procedure, where that provision does not allow such an order being passed or refuses to exercise jurisdiction vested in it u/s 10 of the CPC or exercises such jurisdiction with material irregularity or illegality, it would always be open to this Court to revise such an order u/s 115 of the Code of Civil Procedure. I have in these circumstances no hesitation in repelling the preliminary objection raised by the learned counsel for the respondent. Since the trial Court has not dealt with the merits of the application u/s 10 at all but has in its order under revision dismissed the application on two hypertechnical grounds, the same will have to be decided by the Court below

after hearing the counsel for the parties. The trial Court will have to decide whether a case for stay u/s 10 of the CPC is or is not made out on merits. It is not open to this Court to decide that issue for the first time in revisional proceedings.

8. Before parting with this case, I also want to specifically notice the fact that the original order dated April 20, 1973, on the record of the trial Court has, in fact, not been signed by the Subordinate Judge at all I have not been able to understand how the copying department has shown in the certified copy produced by the petitioner and filed with the revision petition "Sd/- Sarwan Singh Chahr when the original order is not signed at all. Since the order has not been signed by the learned Subordinate Judge, there is, in fact, no legal order in existence but in view of the fact that the order was pronounced in open Court and the parties feel bound by it, I need not set it aside on that additional ground.

9. For the foregoing reasons, I allow this petition, jet aside the order of the trial Court dated April 20, 1973, and direct the trial Court to hear and decide the defendant-petitioner's application u/s 10 of the CPC in accordance with law. Parties may appear before the trial Court on March 18, 1974. The lower Court records should be returned to the trial Court immediately. There is no order as to costs of this application.