

(2013) 12 GUJ CK 0135

In the Gujarat High Court

Case No : Special Civil Application No. 13295 of 2013

Rupal K. Lamba and 2 Ors.

APPELLANT

Vs

Atmiya Institute of Technology and Science

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0135

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Nishant Lalakiya, for the Petitioners No. 1-3, for the Appellant; D.C. Dave with Mr. Jigar M. Patel, Advocate for the Respondent(s) No. 1, for the Respondent

Final Decision : Partly Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Jigar M. Patel, learned advocate, waives service of notice of Rule for respondent No. 1. On the facts and in the circumstances of the case and with the consent of learned counsel for the respective parties, the petition is being heard and decided finally. This petition under Articles- 226 and 227 of the Constitution of India, is directed against the order dated 24.07.2013, passed by the learned 13th Additional Senior Civil Judge, Rajkot, below the application at Exhibit-55, in Special Civil Suit No. 18/2009, whereby the said application preferred by the petitioners for the framing of an additional issue, has been rejected.

2. The respondent herein is the original plaintiff of Special Civil Suit No. 18/2009, that has been instituted for breach of contract and compensation. The petitioners-defendants appeared and filed their written statement. Thereafter, issues came to be framed on 02.02.2012. The suit is, at present, at the stage of evidence. According to the petitioners, an issue regarding a sponsorship letter on which the petitioners are relying was not framed, therefore, the application at Exhibit-55 was preferred by them, with a prayer to frame an additional issue in this regard. The said application has been rejected by the impugned order. Hence, the

petition.

3. This Court has heard Mr. Nishant Lalakiya, learned advocate for the petitioners and Mr. D.C. Dave, learned Senior Advocate with Mr. Jigar M. Patel, learned advocate for respondent No. 1, perused the averments made in the petition, contents of the impugned order and other documents on record.

4. Mr. Nishant Lalakiya, learned advocate for the petitioners submits that the impugned order of the Trial Court is an unreasoned one. It ought to have been appreciated by the Trial Court that the sponsorship letter on which the petitioners are relying is the basis of the contract between the parties.

5. On the other hand, Mr. D.C. Dave, learned Senior Advocate for respondent No. 1 submits that the issue sought to be framed does not arise from the controversy between the parties, as the case of the respondent-plaintiff is not based upon the sponsorship letter, but upon the Agreement entered into between the parties. It is further submitted that even assuming that the issue does arise, it is not sought to be framed properly, as the burden of proof is wrongly sought to be put on the respondent-plaintiff.

6. Having heard learned counsel for the respective parties, it appears that several contentions were raised in the application filed by the petitioners, that has been rejected by the impugned order. However, none of these contentions appear to have been considered or dealt with by the Trial Court, in the said order. There is no adjudication regarding the aspect whether the issue sought to be framed is necessary for the proper adjudication of the controversy or whether the onus of proof is correctly put on the plaintiff, or not. Further, the Trial Court appears to have rejected the application merely on the ground that, if it finds that an issue is required to be framed, it can always do so at a later stage in the suit.

7. It is not in dispute that the suit is at the stage of evidence and if an issue is to be framed, it would be appropriate to do so at this stage, as it would curtail the delay in the decision of the suit and save the parties from filing the affidavits in examination-in-chief, at a later stage.

8. It is evident from a perusal of the impugned order that no reasons have been assigned by the learned Trial Judge while rejecting the application. The impugned order is a cryptic and cursory one, apart from being unreasoned. To state that the application is being rejected as it is open to the Court to frame an issue at a later stage cannot be said to be a reason for rejection of the application, without dealing with any of the contentions raised by the petitioners. In the absence of reasons, the impugned order is unsustainable in law.

9. It is a well-settled position of law that the requirement of indicating reasons in support of a particular decision is imperative. In Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers, the Supreme Court has held as below:

21. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions or exercise of judicial discretion by the courts. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever precise they may be.

10. In State of Rajasthan Vs. Rajendra Prasad Jain, the Supreme Court has held that:

8. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha Vs. State of Bihar and Others,

9. Even in respect of administrative orders, Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)(NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

(emphasis supplied)

11. The above principles of law apply squarely in the present case. Apart from being a cryptic and unreasoned order, the impugned order does not disclose a proper application of mind. For the aforestated reasons, the following order is passed:

The impugned order dated 24.07.2013, passed by the learned 13th Additional Senior Civil Judge, Rajkot, below the application at Exhibit-55, in Special Civil Suit No. 18/2009, is hereby quashed and set aside. The matter is remanded to the Trial Court for fresh adjudication and hearing, in accordance with law. The Trial Court shall decide the application at Exhibit-55 afresh on, or before, 31.01.2014.

The petition is partly-allowed. Rule is made absolute, accordingly.

It is clarified that while passing this order, the Court has not entered into the merits of the case.