
(2014) 05 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1843/2014

Saroj	Vs	APPELLANT
Parbhu Narayan Mathur		RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 4(2), Order 47 Rule 8

Citation : (2014) 05 RAJ CK 0024

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : H.R. Soni, Advocate for the Appellant; M.D. Boob and Mr. Mahesh Joshi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition is directed against the order dated 17.2.2014 passed by the trial court, whereby the trial court came to the conclusion that this Court by its judgment dated 7.2.2014 passed in S.B. Civil First Appeal No. 152/2013 (Smt. Saroj & Ors. v. Prabhu Narain Mathur & Anr.) had directed the trial court to deal with the matter from the stage subsequent to the order XLVII, Rule 8 CPC and decide issues No. 4, 7 & 10 after giving opportunity of hearing to the parties and pass a fresh judgment and decree.

2. It is submitted by learned counsel for the petitioners that by the judgment dated 7.2.2014 (supra), this Court had not confined the remand to issue No. 4, 7 & 10 only and the suit as a whole was remanded back and therefore, the observations of the trial court that only issue No. 4, 7 & 10 are required to be dealt with, is ex-facie incorrect, the trial court is required to deal with the entire suit.

3. Reliance was placed on the observations made in the case of Maji Mohan Kanwar and Others Vs. The State of Rajasthan and Another, and Umrao Singh v. The Commissioner Khudkasht, Rajasthan, Jaipur: 1972 RLW 129, wherein it was

held that once the stage under Rule 8 of Order XLVII is arrived, the original case is registered and the court rehears the same on merits and after rehearing the same, the same may either result in repetition, reversal, variation of the former decree or order. In either case since the whole matter is reheard, there is a fresh decree or order.

4. Reliance was also placed on judgment of the Hon''ble Supreme Court in DSR Steel (P) Ltd. Vs. State of Rajasthan and Others, ; Municipal Corporation of Delhi Vs. Yashwant Singh Negi, ; State of Rajasthan & Anr. v. Mohan Singh: 2003(1) DNJ 402 and Anandi Prasad Dwivedi and Another Vs. State of M.P., .

5. Opposing the submissions made by learned counsel for the petitioners, learned counsel for the respondents submitted that the judgment passed by this Court in the first appeal does not call for any interpretation contrary to what has been made by the trial court and therefore, the trial court was justified in passing the impugned order.

6. Reliance was placed on Chote Lal Vs. Kalyan Prasad and Others, to contend that the jurisdiction of the trial court is limited on remand to follow the directions issued by the High Court.

7. I have considered the rival submissions.

8. This Court while deciding the first appeal by its judgment dated 7.2.2014 came to the conclusion that the trial court had not followed the procedure as prescribed under Order XLVII, Rule 8 CPC and inter-alia following directions/ observations were made:-

In view of the above, while the order passed by the trial court on review petition dated 22.02.2013 to the extent of exercise of power under Order XLVII, Rule 4(2) CPC granting the petition for review is upheld, the consequential order passed under Order XLVII, Rule 8 CPC cannot be sustained and, therefore, to the said extent the same is liable to be set aside and is, therefore, set aside.

In consequence of the above, the matter is required to be remanded back to the trial court to deal with the matter from the stage subsequent to passing of the order under Order XLVII, Rule 4(2) CPC and for rehearing the parties and pass judgment and decree in terms of the observations made hereinbefore.

The trial court would pass appropriate judgment and decree after rehearing the parties in pursuance of the judgment on review passed by it on 22.02.2013 to the extent upheld by this Court and, any of the parties aggrieved by the determination subsequent thereto by way of judgment and decree, would be free to take appropriate proceedings according to law and would also be free to re-agitate the issues on merits raised in the present proceedings and not determined hereinbefore.

Accordingly, in view of the above, the appeal is partly allowed. The judgment and order dated 22.02.2013 passed by the trial court on review petition is partly set

aside and the suit No. 35/2011 is remanded and restored back to the trial court to proceed with the same from the stage the application filed by respondent-defendant was granted under Order XLVII, Rule 4(2) CPC and after rehearing the parties pass a fresh judgment and decree

8. The directions issued by this Court quoted above are unambiguous. The order passed by the trial court dated 22.2.2013 on review petition to the extent of passing the consequential order in contravention of provisions of order XLVII, Rule 8 CPC was set aside and the matter was remanded back to the trial court to deal with the same from the stage subsequent to passing of the order under Order XLVII, Rule 4(2) CPC and for rehearing the parties and pass the judgment and decree in terms of the observations made in the said judgment. The judgment went on to direct the trial court to pass appropriate judgment and decree after rehearing the parties in pursuance of the judgment on review passed by it on 22.2.2013 to the extent upheld in the judgment dated 7.2.2014 and specifically further provided that any of the parties aggrieved by the determination subsequent thereto by way of judgment and decree would be free to take appropriate proceedings according to law and "would also be free to re-agitate the issues on merits raised in the present proceedings and not determined hereinbefore." and accordingly, the appeal was partly allowed and the judgment and order dated 22.2.2013 passed by the trial court on review petition was partly set aside and the suit was remanded and restored back to the trial court to proceed with the same from the stage indicated hereinbefore and pass a fresh judgment and decree.

9. The very fact that this Court kept it open for the parties to re-agitate the issues on merits raised in SBCFA No. 152/2013 decided on 7.2.2014 (supra) necessarily means that the findings on the issues which were not affected as a consequence to the grant of review by the trial court by order dated 22.2.2013 were neither disturbed nor any finding about validity whereof was recorded and therefore, it is upto the trial court to pass a fresh judgment based on its finding on issues affected by the grant of review by order dated 22.2.2013.

10. So far as the submissions of learned counsel for the petitioners regarding hearing of the whole suit as such in pursuance of the order passed on review petition is concerned, the same necessarily depends upon the nature of the order passed in a review petition. In a given case a review under

11. Order XLVII, Rule 4(2) CPC may be accepted on a aspect which affects the whole of the case and in a given case, the acceptance of review petition has a very limited implication on certain issues and it is only for the trial court to determine the implication and it cannot be laid down as a rule that in every case where a review is accepted the entire suit and/or findings on all the issues are at large for the parties to make submissions all over again. The judgment cited by learned counsel for the petitioners has essentially no application to the facts of the present case.

12. In view of the above discussion, there is no substance in the present writ petition, the same is, therefore, dismissed.

13. No costs.