
(2012) 09 RAJ CK 0108
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6880 of 2011

Save the Children Fund (U.K.)	Vs	APPELLANT
Dr. Suresh Chandra Sharma and Others		RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 2 Rule 2, Order 6 Rule 17,
Order 7 Rule 11
Constitution of India, 1950 — Article 227

Citation : (2012) 09 RAJ CK 0108

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Mahendra Singh, for the Appellant; Vikrant Gupta for the
Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Bela M. Trivedi

1. The present petition has been filed by the petitioner-defendant under Article 227 of the Constitution of India challenging the order dated 20.4.11 passed by the Addl. District & Sessions Judge (Fast Track) No. 2, Jaipur City, Jaipur (hereinafter referred to as "the trial court") in Civil Suit No. 363/09, whereby the trial court has dismissed the application of the petitioner under Order XIV Rule 2 of CPC. The short facts giving rise to the present petition are that the respondent No. 1-original plaintiff was working as the Programme Coordinator with the petitioner-defendant and his services were terminated by the petitioner vide order dated 24.10.2000. The respondent No. 1 had earlier filed one suit challenging the said termination order in the court of Civil Judge, (JD) No. 2, Jaipur City, Jaipur, in which an application under Order VII Rule 11 was filed by the petitioner-defendant contending inter alia that the suit was barred under the Specific Relief Act. The said application was allowed by the said court, and the appeal filed by the respondent-plaintiff was dismissed by the appellate court, and

the second appeal filed by the respondent-plaintiff was also dismissed by the High Court. The respondent-plaintiff thereafter filed the present suit against the petitioner-defendant before the trial court seeking the damages to the tune of Rs. 30,26,000/- with interest. In the present suit also the petitioner-defendant had filed an application under Order VII Rule 11 of CPC for rejection of the suit on the ground that the court did not have the jurisdiction. The said application was dismissed by the trial court vide the order dated 9.9.04, and the writ petition filed against the said order was dismissed by the High Court vide the order dated 27.3.06. The said order was carried to the Supreme Court by the petitioner. The Supreme Court vide the order dated 29.3.07 dismissed the said appeal by observing interalia that:

Accordingly we reject the application under Order VII Rule 11 reserving liberty with the appellants to raise the point of jurisdiction, if so advised, in the written statement. In case the point of jurisdiction has not been taken in the Written Statement already filed, in that event, the appellants may raise the jurisdiction point by taking an additional plea. If such a point of jurisdiction is taken, then the Court shall decide the same in accordance with law without being influenced by the orders passed by the trial court or by the impugned order passed by the High Court.

2. It further appears that thereafter the petitioner moved an application under Order VI Rule 17 of CPC praying for amendment in the written statement raising the legal objections against the maintainability of the suit. The said application was allowed by the trial court. The trial court thereafter framed the issues from the pleadings of the parties on 29.1.2010. The petitioner thereafter filed an application for amendment of issues which was also allowed by the trial court vide the order dated 2.2.11 and the trial court framed the additional issues regarding the maintainability of the suit. The petitioner thereafter submitted an application under Order XIV Rule 2 of CPC requesting the court to decide the issue Nos. 3, 4, 4A, 5 and 5A as preliminary issues under Order XIV Rule 2 of CPC.

3. The said application has been dismissed by the trial court vide the impugned order dated 20.4.11. Being aggrieved by the said order the petitioner has invoked the extraordinary jurisdiction of this court under Article 227 of the Constitution of India.

4. It has been sought to be submitted by the learned counsel Mr. Mahendra Singh for the petitioner that the issue Nos. 3, 4, 4A, 5 and 5A are the legal issues pertaining to the jurisdiction of the court and the bar to the suit created by the Limitation Act as well as the bar created by order II Rule 2 of CPC. Therefore according to Mr. Singh, the said issues were required to be tried as preliminary issues before deciding the other issues in the suit. Relying upon the decision of this court in case of Praduman Kumar Vs. Girdhari Singh and Others, Mr. Singh has submitted that it was incumbent upon the trial court to decide the issues of law as preliminary issues under Order XIV Rule 2. Mr. Singh has also

relied upon the decision in the case of Amir Chand Vs. Harji Ram and Others, to submit that the trial court had committed material irregularity in not deciding the issues of law as preliminary issues as contemplated under Order XIV Rule 2 of CPC.

5. However, the learned counsel Mr. Vikrant Gupta for the respondent-plaintiff has submitted that the earlier suit filed by the respondent-plaintiff was not decided on merits and the plaint was rejected under Order VII Rule 11 of CPC. Therefore according to Mr. Gupta, there was no bar against filing the second suit and that too for the reliefs which were not claimed for in the earlier suit. He also submitted that the issue Nos. 3, 44A, 5 and 5A are the issues pertaining to the mixed questions of law and facts and could not be tried as the preliminary issues. Mr. Gupta further submitted that the plaintiff does not want to examine any witness except himself and he has already submitted his affidavit for examination-in-chief and, that when the matter is ripe for evidence, all issues could be decided finally.

6. Having regard to the submissions made by the learned counsels for the parties and to the impugned order passed by the trial court, it appears that the trial court has rejected the application of the petitioner filed under Order XIV Rule 2 of CPC on the ground that the issues sought to be tried as preliminary issues were mixed questions of law and facts and could not be decided as preliminary issues. It is needless to say that the impugned order passed by the trial court is discretionary in nature and the learned counsel Mr. Mahendra Singh for the petitioner has failed to point out any gross illegality or perversity in the said order passed by the trial court. It is also axiomatic that the jurisdiction of the High Court under Article 227 of the Constitution of India is very limited and normally the High Court should not interfere with the discretionary orders passed by the trial court unless the same are exfacie perverse or illegal or causing gross injustice to any party.

7. In the instant case, since the suit is already ripe for trial and since the learned counsel for the respondent-plaintiff has submitted that the plaintiff does not want to examine any witness except the plaintiff, whose affidavit for examination-in-chief has already been filed, it would be in the fitness of the things if all the issues in the suit are decided by the trial court finally on merits. It is also pointed out by the learned counsel for the respondent-plaintiff that the matter was adjourned from time to time for the cross-examination of the plaintiff, however because of the pendency of the present petition, the suit proceedings were not being proceeded further by the trial court. It is also pertinent to note that even for deciding some of the issues as preliminary issues, the trial court would have to record the evidence of both the parties, and therefore also it is desirable that all the issues are decided finally, in order to avoid duplicity of evidence. The trial court has also observed that the issues sought to be tried as preliminary issues are mixed questions of law and facts. Under the circumstances, without entering into the merits of the case, the present petition deserves to be dismissed. In that

view of the matter, the petition does not deserve any consideration and is accordingly dismissed.