
(1950) 08 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Revision No. 55 of 1950

Shanker Lal

APPELLANT

Vs

Deena Nath

RESPONDENT

Date of Decision : 10-08-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Evidence Act, 1872 — Section 101, 102, 103

Citation : AIR 1951 Raj 79 : (1950) RLW 249

Hon'ble Judges : Gupta, J

Bench : Single Bench

Advocate : Dashrath Mal and Rawatmal, for the Appellant; Lakshmi Narain, for the Respondent

Final Decision : Allowed

Judgement

Gupta, J.—This civil revision is directed against an order of the Dist J., Bikaner, dated 14-3-1950. A suit had been filed on behalf of the opposite party against the petitioner for the recovery of a sum of Rs. 4684/6/- on 14-9-1949. After the applicant had filed his written statement in which he had denied to have received any amount from the opposite party by way of loan but alleged that he had received the sum towards satisfaction of the debt he had advanced to one Ram Singh on the plaintiff standing surety for the repayment of the loan, the Court framed certain issues & proceeded to try the suit. The issues that were framed were to the following effect:

"1. Had the plaintiff stood surety for the debt of Thakur Bam Singh & did the defendant receive the amount of Rs. 4268/3/- towards the debt of Ram Singh?

2. Is the defendant liable to pay the interest claimed?"

2. Not satisfied with the first of these issues in which initial burden had been cast on the defendant, he applied to the Trial Court on 13-1-1950, for amendment of the issue No. 1 so as to put the burden of proof that he had advanced the sum to the defendant

by way of loan on the pltf, opposite party. This appln was rejected on 14-3-1950, & he has come up to this Ct in revn & it is contended by his learned counsel that the issue No. 1 has been wrongly framed & unnecessary burden of proof has been put upon him.

3. The learned counsel for the opposite party has raised a preliminary objection that, inasmuch as, it was not a case decided, no revn lay. This contention of the learned counsel for the opposite party is supported by the view that has been taken by the Chief Ct of Oudh vide AIR 1942 431 (Oudh) In reply, the counsel for the appct relied upon a contrary view taken by the Madras & the Rangoon High Cts vide S.S.S. Varisai Muhammad Rowther Vs. Marungapuri Estate in charge of the Court of Wards and Another, & "C. S. Pillai v. K. K. Konar" AIR 1935 Rang 131: (159 IC 70). The learned counsel for the appct has also cited a judgment of the Chief Ct of Jodhpur reported in 1940 MLR 249 (Civil)" in which reliance was placed on another decision reported in 1938 MLR 113 (Civil)" in which such an objection had been overruled. The Madras decisions do not appear to be consistent as would appear from another judgment of the same High Ct reported in "Manickvachakam Chettiar v. Official Receiver, East Tanjore" AIR 1939 Mad 733 : (186 IC 120). Moreover, the Madras judgments are judgments of single judges & so is the judgment of the Chief Ct reported in "1940 MLR 249 (Civil)". But the contrary view relied upon by the learned counsel for the appct finds great support from the recent judgments of Patna & the Nagpur High Cts vide Bir Babu Vs. Raghubar Babu and Others, & AIR 1948 258 (Nagpur) The Patna case is a division bench case & following the Madras decision reported in "Varisai Mahomed v. Marungapuri Estate" AIR 1939 Mad 644: (1939 MLJ 334), it has been held there that the correct placing of the onus of proof is a vital point of procedure & an incorrect placing of onus, may, therefore, amount to a material irregularity. It has been further held that where the effect of requiring the deft to lead evidence seriously prejudices him & deprive him of the very valuable right of adducing evidence in rebuttal of that adduced by the pltf, the prejudicial effect of the procedure is not capable of remedy & the High Ct ought to interfere in revision. The Nagpur case is a full bench case. Justice Padhye has, in his judgment, observed as follows:

"If a Ct refused to frame an issue on a material proposition affirmed by ore party & denied by the other, it would be guilty of not exercising jurisdiction vested in it by law requiring it at the first hearing of the suit to record issues on which the right decision of the case depends. If, on the other hand, it framed issues which do not arise out of the material proposition of law or fact affirmed by one party & denied by the other, it would be acting either in excess of its jurisdiction or with material irregularity, & in either case the order of the subordinate Ct may be open to revision. In fact, by refusing to frame an issue which actually does arise in the case, the Ct shuts out a trial of a part of his cast. In such a case it would be necessary for the High Ct to interfere in revision & to set the matter right so as to avoid waste of time & costs."

& answered the question, "Has the High Ct jurisdiction to entertain revisions touching (1), (2) & (3) a question relating to the framing of issue", in the affirmative.

4. Agreeing with this view of Justice Padhye, another Judge of the P. B., Pollock J. has observed as follows:

"I would, therefore, say that there may be cases in which the High Court has power to interfere in revision with the lower Ct's interpretation of a remand order or on a question of amendment of a pleading "or on a question relating to the framing of an issue"."

This opinion appears to me to be quite sound & I have no hesitation in adopting it. In the view I have taken the objection on behalf of the opposite party has no force and is overruled.

5. Coming to the merits, the deft in this case had, while admitting that he had received the amount alleged by the pltf to have been paid to him, denied that he had received it as a loan & alleged that the same was received by him towards the payment of the amount given by him in loan to one Thakur Ram Singh on the guarantee of the pltf. I think it is for the pltf first to establish that he had advanced the amount to the deft "as a loan". It would be, only after the pltf had discharged his onus that the deft could be called to prove that he had received the amount not as a loan but towards the satisfaction of the amount advanced by him to one Thakur Ram Singh for whom the pltf had stood surety. The effect of requiring the deft in this case to lead evidence would seriously prejudice him by assuming without proof that he had received the amount as a loan & would deprive him of the very valuable right of adducing evidence in rebuttal of evidence adduced by the pltf. I entirely agree with the view of the Patna & the Nagpur High Cts & accept the revision because the prejudicial effect of the procedure in the lower Ct was not capable of remedy & it is a fit case, in my opinion, in which I ought to interfere in revision. I accept this revision & direct the lower Ct to frame proper issues. The appct will get his costs from the opposite party.