

(1979) 09 GUJ CK 0005
In the Gujarat High Court

Shirazbhai G. Munshi

APPELLANT

Vs

Ramjuji Gabharuji

RESPONDENT

Date of Decision : 17-09-1979

Acts Referred:

Ahmedabad City Civil Court Rules, 1961 — Rule 144
Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 12 Rule 6, Order 37 Rule 3(5), 115

Citation : (1979) 2 GLR 254

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by the original defendant of the Summary Suit No. 452 of 1979 in the Ahmedabad City Civil Court, in which the learned City Civil Judge Shri I.V. Shelat passed an order on July 5, 1979 granting conditional leave to defend on his depositing the sum of 25,000/- in cash or by the demand draft within a month from the date of the grant of the leave.

2. Being aggrieved by the order dated July 5, 1979 passed by the said Chamber Judge, City Civil Court, Ahmedabad, the original defendant has moved this Court by filing the present revision application. The suit in question is filed by the opponent-plaintiff for the realization of Rs. 37,120-17 from the petitioner-defendant on the basis of a writing. The petitioner-defendant resisted the summons for judgment by filing his affidavit, Ex 9. He denied the plaintiff's allegation that there was an agreement to pay the sum of Rs. 37,120-17, but he admitted the agreement for the sum of Rs. 25,000-00 which he had agreed to pay by instalments. He also contended that he had paid Rs. 2,500/- and so the only amount the plaintiff could claim was Rs. 22,500-00. In other words", he disputed the balance out of Rs. 37,120-17.

3. The learned Chamber Judge, however, passed the following order:

On the defendant depositing a sum of Rs. 25,000/- (Rupees twenty five thousand) in cash or by demand draft within a month, leave to defend. On the

deposit being made as above, suit to be transferred to the list of long causes, the written statement within 2 weeks thereafter from to-day.

4. The effect of the order is that, if the said deposit of Rs. 25,000/- is not made, there will be a judgment, not only for the admitted claim but for the whole of the claim. The applicant's contention, therefore, is that the learned Judge has failed to exercise jurisdiction vested in him by law by not deciding the question of leave for the remainder of the amount and by imposing an onerous condition which would forthwith result into a decree for the entire amount that without the Judge having examined the plausibility or otherwise of the defence and the Judge without examining whether the cause existed for an unconditional or conditional leave to defend in that regard.

5. Mr. Nanavaty, the learned advocate for the petitioner invited my attention to Rule 144 of the Ahmedabad City Civil Court Rules, 1961 under which it is provided that if on the summons for judgment appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted subject to such terms, if any, as to suspending execution, or otherwise as the Judge may think fit. Placing reliance on the said Rule 144, Mr. Nanavaty urged that the learned Judge should have ordinarily taken recourse to Rule 144 and also to Order 12 Rule 6 C.P.C. and should have proceeded to pass the decree for the admitted claim and should have in that regard examined the question of granting instalments which was specifically prayed for, and that having not been done so, a serious prejudice was caused to the defendant by the impugned order which, as set out in paragraph 4 above, shuts the doors against the defendant even in respect of the claim which is not admitted and for which the leave to defend was sought.

6. Mr. Shaikh, the learned advocate for the opponent, however, invited my attention to Order XXXVII Rule 2(5) second proviso and the judgment of B.K. Mehta J. in Khalid Ibrahim Beg and Anr. v. State Bank of India 20 G.L.R. 525 and urged that under the second proviso the only thing open to the learned Judge dealing with the summons for judgment is to refuse to grant the leave without the defendant depositing the admitted claim of the plaintiff. The said proviso, no doubt, reads as follows:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

While examining the scheme of Order XXXVII, B.K. Mehta J. also has observed as follows;

...The Court has also to bear in mind the second proviso which provides that no leave shall be granted without the defendant depositing the admitted claim to

the plaintiff....

Placing reliance heavily on the abovementioned second proviso and the judgment of B.K. Mehta J., Mr. Shaikh very vehemently contended that the order that was passed by the learned trial Judge in this case was perfectly valid order that would not be interfered with by this Court specially when I was exercising revisional jurisdiction u/s 115 of the Civil Procedure Code.

7. In this connection, the law laid down by the Supreme Court prior to insertion of the second proviso deserves to be noted. In the case of Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, , the Supreme Court has laid down clearly the guidelines or principles to be followed while considering the question of granting leave to defend. They are set out under the captions (a), (b), (c), (d) and (e). As held by B.K. Mehta J. in the case of Khalid Ibrahim (Supra) the said guidelines still hold good despite some amendment in Order 37 Rule 3(5) of the Civil Procedure Code. The learned Judge in this connection has observed as follow:

It must be admitted at the outset that the discretion which court enjoyed under the original provisions of Order 37, Rules 1, 2 and 3 before the amendment in 1976 is now sought to be delineated by the presents. Two provisos arc pointer in that direction though under the main enactment contained in Sub-rule (5) extracted above, the court still enjoys the discretion in the matter, whether leave should be granted with or without conditions.... It is the first proviso which really causes some anxiety, whether it has got any bearing on the main enactment contained in Sub-rule (5). It is patent on the face of the proviso that it is couched in double negative. The said proviso prescribes that leave to defend shall not be refused unless the court is satisfied about the absence of substantial defence or defence being frivolous or vexatious. It is no doubt true that this proviso appears to be mandatory on the face of it, but reading Sub-rule (5) as a whole together with the two provisos, it appears that the first proviso tries to circumscribe the discretion of the court in the matter of refusal of leave. The first proviso obliges the court that before refusing to grant leave it shall satisfy that the facts disclosed by the defendant do not indicate that there is substantial defence or the court is satisfied that the defence is frivolous or vexatious. The satisfaction of the court before refusing to grant leave about the want of substantial defence complicates the situation since the absence of substantial defence may induce the court in a given case to refuse grant of leave. Notwithstanding this complication, on the well known principle of interpretation of statute, one has to construe the different provisions of an enactment in a harmonious manner so that no part of it is rendered redundant or otiose. Three situations may conceivably arise in such suits. The defence may be of a substantial nature; it may as well be frivolous or vexatious, and thirdly, there may be a defence which is triable and given an opportunity, the defendant may be able to make his case good. Reading the main enactment together with the first proviso, I am of the opinion that so far as the first two situations are

concerned, the job of the court is not difficult. In a case where there is a substantial or a good defence, the court must grant, as a matter of course, leave to defend the suit. In a case where the defence is patently frivolous or vexatious and the court is satisfied about it, it would refuse to grant leave. The role of the court becomes difficult only in those cases where there is a disclosure of probable defence which may be made good if an opportunity is given to the defendant to substantiate his case. It is in this gray area that the discretion of the court is to be regulated by known and recognised principles. I am of the opinion that having regard to the principles which were governing the discretion of the court till the relevant provisions of Order 37 of the CPC were amended in 1976 should continue to govern the discretion of the court in this gray area where there is a probable defence which may be made good provided an opportunity is given. It is here, where the court has to apply its experience and common sense and decide for itself, whether leave should be granted conditionally or unconditionally.

The learned Judge was not called upon to deal with the second proviso because in that case the part of the claim was not admitted as is the case here, and it appears that leave to defend was granted for the whole of the suit. Examining the scheme of Order 37 Rule 3 as a whole, the learned Judge made an obiter observation as follows:

The court has also to bear in mind the second proviso which provides that no leave shall be granted without the defendant depositing the admitted claim of the plaintiff.

Mr. Shaikh for the original plaintiff pressed the above-mentioned observation into service and urged with appreciable vehemence that the order passed by the learned trial Judge was the only legal order that could be passed in the facts and circumstances of the case.

8. To me it appears that the proviso is not to be subjected to the interpretation which Mr. Shaikh wants to subject it to. It is to be recalled here as the basic principle of interpretation that all the provisions in a given enactment are to be harmoniously construed so that each may operate in its respective field without offending the other. Order 12 Rule 6 of the Civil Procedure Code, as it now stands, reads as follows:

(1) Where admissions of fact have been made either in the pleading or otherwise whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

This is the substitution of the original Rule 6 and the objects and reasons that made the Legislature to substitute the Rule 6 are reproduced below:

Clause 65-Sub-clause (ii)-Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain a speedy judgment at least to the extent of the relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule.

9. Rule 144 of the City Civil Court Rules, 1960 is nothing but the reproduction of the provisions of Order 12 Rule 6 of the Civil Procedure Code. The said Rule 144 of the City Civil Court Rules is reproduced below:

144. Judgement for part of claim:

If on the summons for judgement it appears that the defence set up by the defendant applies only a part of the plaintiff's claim, or that any part of his claim is admitted, plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or otherwise as the Judge may think fit.

10. The apparent conflict that arises in this petition is whether in a situation like the one that has arisen in this petition, the court should grant leave to defend the whole suit by strict adherence to the second proviso mentioned above or whether the court should have recourse to Order 12 Rule 6 of the CPC and incidentally to Rule 144 of the Ahmedabad City Civil Court Rules, 1961. If the second proviso is taken at its, strict face value without bringing to mind the provisions of Order 12 Rule 6 of the Code, what has been insisted upon by Mr. Shaikh for the original plaintiff would be the outcome. However, the second proviso could be and should be interpreted to mean that if the defendant the whole suit, including the admitted portion, he should be subjected to the depositing of the admitted claim as a condition precedent to granting the leave either unconditionally or conditionally. This interpretation serves dual purpose. It firstly takes note of the provisions of Order 12 Rule 6 of the Civil Procedure Code. Secondly, it supports the well known dictum of law that nobody shall be condemned unheard. In the case on hand, if the strict interpretation of the second proviso is insisted upon, it would mean that a decree shall follow against the defendant even in respect of the disputed claim to defend which he might have a good case if he is financially not in a position to spare the sum covering the admitted claim and deposit the same with the court. The Legislature could not be attributed such a drastic eventuality and it is, therefore, reasonable to hold that the second proviso is intended to cover only those cases where the severance of the admitted claim from the totality of the claim is not feasible and the defendant claims the leave to defend the entire claim by showing the true or assumed bona fides of his by making an admission of a part of the claim.

11. Mr. Shaikh in this connection urged that if the course suggested by me was adopted, there would be decrees more than one in the same suit. Apart from Order 12 Rule 6 of the Code, there is a judgment of the Supreme Court itself speaking of the possibility of more than one decree in a suit. The case to be referred in that connection is the case of Bai Chanchal and Others Vs. Syed Jalaluddin and Others, . In paragraph 8, the Supreme Court has observed as follows:

The third point raised by learned Counsel was that, since there was one single suit based on the lease of 1895 for ejectment of persons in possession, there could be only one single decree in that suit and the court was incompetent to pass two separate decrees on 8th July 1946 and 28th January 1949. Counsel, in this connection relied on the provisions of Rules 1 and 12 of Order XX of the CPC which relate to the pronouncement of judgment and the court passing a decree in a suit. These Rules have really not relevance. On the other hand, Rule 3 of order 23 C.P.C. clearly envisages a decree being passed in respect of part of the subject-matter of the suit on a compromise and Rule 6 Order 12 C.P.C. permits the passing of a judgment at any stage without waiting for determination of other questions. Thus, it is clear that in the same suit there can be more than one decree passed at different stages.

12. Mr. Shaikh in support of his submission also invited my attention to the statement of objects and reasons that prompted the Legislature to insert the second proviso. He invited my attention to the following statement:

The Committee are also of the view that if any amount is admitted by the defendant to be due from him, leave to defend should not be granted, unless the admitted amount is deposited by him in the court. Two provisions to Sub-rule (5) of rule 3 or order 37 have been inserted accordingly.

The reference is obviously to leave to defend the whole suit. In the case on hands the defendant has categorically invited a decree against him in respect of the admitted claim with an added prayer for instalments and had confined his prayer for leave only to the disputed claim.

In above view of the matter, the second proviso is interpreted by me to be covering the cases referred to above. It is the duty of the Court concerned to scan the situations like the one that has arisen in this case and pass the appropriate orders. That having been not done by the learned Judge, the impugned order is required to be set aside and the matter is remanded to the trial court for dealing with the question afresh in the light of the exposition of law make in this case. The revision application is, therefore, allowed. Rule is accordingly made absolute with no order as to costs.