
(1965) 04 GAU CK 0008
In the Gauhati High Court
Case No : Civil Revision No. 3 of 1965

Shri Baba Shiva Sambhu and another	APPELLANT
Vs	
Raj Mohan Deb Nath and others	RESPONDENT

Date of Decision : 08-04-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14, Order 11 Rule 21

Citation : (1965) 04 GAU CK 0008

Hon'ble Judges : Rajvi Roop Singh, J.C.

Bench : Single Bench

Advocate : J.K. Roy and S.C. Mujumdar, for the Appellant; H.C. Nath, for the Respondent

Final Decision : Dismissed

Judgement

Rajvi Roop Singh, J.C.

1. This is an application in revision on behalf of the plaintiff against the order of learned Munsiff, Kamalpur, dated 21-12-64 by which he dismissed the suit for non-production of documents in compliance with his order dated 3-8-64.

2. The facts which have led up to this revision petition lie in a short compass and may be narrated as follows:

The plaintiff instituted Title Suit No. 15 of 1962 in the Court of Munsiff, Kamalpur, against the defendants-opposite party for khas possession of the suit land on declaration of plaintiff's title thereon. The defendant No. 1 appeared and filed the written statement. Thereafter a local investigation was held by Survey Commissioner. After that on 3-8-64 the Court ordered the plaintiff to file the documents. The plaintiff contended that the (sic)ments were filed in a Survey Appeal (sic) of 1964 and the appellate Court requirea(sic) for writing the Judgment, therefore he cannot produce them. As the plaintiff failed to produce them as ordered by the Court, so the learned Munsiff dismissed the suit on 21-12-64.

3. Being aggrieved by this order of learned Munsiff the plaintiff has come to this Court in revision.

4. Heard the learned Advocates and perused the record of the Case.

5. In this case the sole point for consideration is whether the order passed by the trial Court dismissing the suit of the plaintiff by its order dated 21-12-64 was properly passed under Or. 11 R. 21 C.P.C.

The Order 11 Rule 21 is in these terms: "Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff be liable to have his suit dismissed for want of prosecution, and if a defendant to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly." It is clear that an order under this rule can be made only on three grounds:

(1) the refusal to answer interrogatories, under R. 11:

(2) the refusal to make discovery of document under R. 12: and

(3) the refusal to permit inspection of document under R. 18.

It may also be pointed out that the rule enacts a highly penal provision and so the conditions pre-requisite to its application must be clearly fulfilled before a party can be punished under it. I now turn to the relevant circumstances under which the learned Munsiff dismissed the plaintiff's suit. On 24-7-63 the Court ordered the plaintiff and the defendant to file their documents by 5-8-63. On 5-8-63 the plaintiff presented an application that he could not file his documents as he could not get the copies of the relevant document from the appellate Court. The case was therefore adjourned for 20-8-63. On 20-8-63 the plaintiff again prayed for time for filing the documents. Thereafter on 19-9-63 the plaintiff filed some certified copies of the documents. He also prayed to file the remaining documents. Thereafter the case was adjourned on several dates for the survey of the land by a commissioner. Again on 27-8-64 the plaintiff prayed for time for filing the remaining documents and the case was adjourned to 17-9-64.

On 17-9-64 the plaintiff filed some documents and prayed for time to file the remaining documents and the case was adjourned for 18-11-64. On 18-11-64 the plaintiff again prayed for time and the case was adjourned to 21-12-64. On 21-12-64 the plaintiff again prayed for time to file the remaining papers of jote No. 20 for local investigation. The learned Munsiff rejected the prayer and dismissed the suit on account of non-filing the documents.

6. Now, from the terms of O. 11, R. 21 set forth above, it is clear that even assuming that the plaintiff had been called upon by the Court to produce certain documents in original and that he had failed to do so as the documents were

lying with the Settlement Department, it cannot be postulated that R. 21 is at all attracted into application. Refusal to produce certain documents (see O. 11 R. 14) is not a lapse within the meaning of R. 21 at all and, therefore, the penal consequences prescribed thereunder could not have been imposed. There is ample authority for holding that an order for production of documents under R. 14 is not one of the orders contemplated under this rule and, therefore, any disobedience thereto could not be punished under O. 11 R. 21. See *The Lyalpur Sugar Mills and Co. and Another Vs. The Ram Chandra Gur Sahai Cotton Mills and Co.*, ; *Subbayar Vs. M.L.M. Ramanathan Chettiar*, ; *S.P.S.R. Subramania Ayyar Vs. C. Bomer Cooty Haji*, ; AIR 1933 248 (Lahore); *Tafazzul and Others Vs. Shah Mohammad and Others*, ; *Shamalal Guruprasad v. Ganpatlal*, AIR 1954 MP 65.

These cases clearly establish the principle that the non-compliance with an order under O. 11 R. 14 does not and cannot warrant the dismissal of the suit of a plaintiff or the striking off of the defence of the party which is guilty of the non-compliance of the order as such non-compliance does not fall within the ambit of the three grounds which are stated in the rule and which only would justify the striking off of the defence. It may further be pointed out in this connection that where a party fails to produce certain documents under O. 11 R. 14, the Court would be entitled to raise an adverse presumption against the party on account of the non-production of the documents required, but that would not justify its dismissing a suit in the case of a plaintiff or striking off of the defence in the case of a defendant. It has to be emphasised in this connection, and I would do so even at the risk of repetition, that the provisions of this rule are of a very drastic nature, and it is only in rare cases that the penalty contemplated under the rule should be resorted to. Bearing these principles in mind, I have no hesitation in coming to the conclusion that the order passed by the Court of first instance dismissing the suit of the plaintiff was wholly without justification and that in passing that order the Court exercised jurisdiction which did not vest in it in accordance with law.

7. In view of these facts, I am constrained to hold that the order of learned Munsiff, Kamalpur, dismissing the suit is erroneous. I, therefore, accept the revision petition and set aside the order dated 21-12-64. Having regard to all the circumstances of the case, I would leave the parties to bear their own costs.