
(1981) 04 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2071 of 1980

Shri Saraswati Spinning Mills

APPELLANT

Vs

Gheru Lal Bal Chand Abohar

RESPONDENT

Date of Decision : 21-04-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1, Order 10 Rule 2, Order 10 Rule 3, Order 10 Rule 4, Order 10 Rule 4(2)

Citation : AIR 1981 P&H 299 : (1981) 3 ILR (P&H) 381

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

1. This revision petition has been preferred by Shri Saraswati Spinning Mills against the order passed by the subordinate Judge first Class, Fazilka, on April 28, 1980, as per which the learned subordinate Judge struck off the defence of the petitioner who was defendant in a suit filed by the respondent firm for recovery of money. A perusal of the impugned order would show that the learned subordinate Judge appears to have passed the order striking off the defence of the petitioner more by way of punishment as the Proprietor of the petitioner-firm had failed to put in personal appearance in Court in spite of an order to this effect which purports to have been passed by the Trial Court under Order X, rule 2, code of Civil Procedure. The observation "He (petitioner) has been seeking adjournments on one pretext or the other and has defied the lawful order of the Court to appear in this Court for statement under Order 10, Rule 2, C.P.C." indicates the mind of the Court in this behalf.

2. With a view to appreciate if the Trial Court was justified in striking off the defence of the petitioner by invoking the provisions of Order X, rule 4(2) of the Code of Civil Procedure, it would be necessary to notice the relevant provisions, i.e., Order X, rules 1, 2, 3 and 4 are reproduced below for ready reference:

"1. Ascertainment whether allegations in pleadings are admitted or denied:--At the first hearing of the suit the Court shall ascertain from each party or his

pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

2. Oral examination of party, or companion of party.--(1) At the first hearing of the suit, the Court-

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his Pleader is accompanied.

(2) At any subsequent hearing the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

3. Substance of examination to be written.--The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4. Consequence of refusal or inability of Pleader to answer.--(1) Where the Pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit."

3. A resume of the above provisions, particularly Rule 1 would indicate that at the commencement of the suit, on the first date of hearing, the Court has to ascertain from each party or his pleader (emphasis mine) whether he admits or denies such allegations of facts are made in the plaint or written statement of the opposite party. The Court has to record such admissions and denials. As per rule 2, the Court at the first hearing of the suit, with a view to elucidating the matters in controversy in the suit, is required to examine orally such of the parties in the suit appearing in person or present in Court as it deems fit and may orally examine any person able to answer any material question relating to the suit by whom any party appearing in person or present in Court or his pleader is accompanied. The power to examine orally a party or his pleader is also vested

in the Court at any subsequent hearing of the suit under sub-clause (2) of Rule 2. Rule 3 makes it mandatory for the Court to reduce to writing the substance of the examination carried out by it and the same shall form part of the record. We now come to Rule 4 which is more material for the purpose of the present case. Under the said Rule, where the pleader of any party who appears by a pleader or any such person accompanying a pleader, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day. Under sub-clause (2) of rule 4, if such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit. Evidently and as expressly mentioned by the Trial Court, it has exercised power under sub-clause (2) of Rule 4 in striking off the defence of the petitioner on the ground that its proprietor had failed to appear in person as directed by the Court. The question arises as to whether the Court was legally justified in taking this drastic action in a suit involving a large sum of money to the tune of over rupees two lakhs.

4. The learned counsel for the petitioner has contended that the Trial Court could resort to the provisions of rule 4(2) of the code only after it had complied with the provisions of rule 4(1) by calling upon the pleader of the petitioner to answer material questions relating to the suit, which the Trial Court did not do at any stage. The contention has force. The record of the Trial Court was requisitioned at the request of the counsel for the respondent to enable him to point out the order under which the pleader of the petitioner may have been called upon to answer the questions required to be put by the Court pertaining to the suit. No such order is however, forthcoming on the record. On the other hand, when specific application was filed by the petitioner to exempt personal appearance of the proprietor in Court and to permit his pleader who was fully conversant with the facts of the case, to be examined, the trial Court dismissed the said application by merely observing that the pleader of the petitioner would not be in such a position to answer the question with regard to the signatures of Mr. K. C. Makhria, Proprietor of the petitioner-firm, on the disputed documents. The learned Trial Court further observed that "In my opinion it is K.C. Makharia who will be able to admit or deny his signatures on the said documents and it is his admission or denial that will have some legal value." This is an erroneous approach to the whole matter. The admission or denial of documents is generally done by the counsel for the parties and it is only when the counsel is unable to do so that the necessity arises for summoning the party himself in person. In support of his argument, the learned counsel for the petitioner has placed reliance upon Vishnu Kumar Vs. State Bank of Bikaner and Jaipur and Others, , which is an authority dealing directly with the point under discussion. It was held in the said authority that where the Court passed an order under O. X, R. 4 directing the defendant to appear in person without examining the defendant's

duly authorised and instructed counsel, the order is clearly in contravention of O. X, R. 2 and is an illegal exercise of jurisdiction. No authority to the contrary has been cited on behalf of the respondent.

5. The learned counsel for the respondent has also submitted that the order rejecting the prayer of the petitioner for exemption from personal appearance of its proprietor was not impugned and hence it had become final. The argument is again untenable as by mere rejection of the prayer, the petitioner was not affected as the case had been adjourned. It was only when the Trial Court took the drastic step of striking off the defence of the petitioner that they felt the necessity of impugning the order passed by the Court and this, the petitioner was well within his right to do.

6. A faint attempt has also been made on behalf of the respondent to raise an objection that the present revision petition was not competent against the impugned order passed by the trial Court on April 28, 1980, but the authority referred to above, i.e., Vishnu Kumar Vs. State Bank of Bikaner and Jaipur and Others, is also a complete answer to this objection too.

7. In the result, the revision petition succeeds and the impugned order passed by the Trial Court on April 28, 1980, is set aside. The Trial Court, if it is desirous of examining the petitioner with a view to elucidating some matters in controversy in the suit, shall in the first instance call upon the duly authorised pleader of the petitioner to appear and answer any material questions relating to the suit. It is only if the Court finds that the pleader refuses or is unable to answer such questions, that it may call the proprietor of the petitioner-firm in person. The Trial Court shall now proceed with the case in accordance with law.

8. The parties, through their counsel their counsel have been directed to appear before the Trial Court for further proceedings on May 18, 1981.

9. There shall be no order as to costs of this revision petition.

10. Petition allowed.