
(2013) 10 AHC CK 0108

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 381 of 2006

Smt. Anaro Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 ADJ 226 : (2013) 101 ALR 626 : (2014) 3 AWC 2521 : (2014) 122 RD 85

Hon'ble Judges : P.K.S. Baghel, J

Bench : Single Bench

Advocate : M.K. Gupta and Pankaj Agarwal, for the Appellant; A.K. Yadav, for the Respondent

Final Decision : Allowed

Judgement

P.K.S. Baghel, J.—The petitioner is aggrieved by the order of Additional District Judge dated 7.10.2005, allowing the application of the defendant-respondent under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short, "CPC") to bring the additional evidence on the record. The essential facts are; the petitioner-plaintiff filed a Civil Suit No. 208 of 1998 in the Court of Additional Civil Judge for permanent injunction restraining the officials and employees of Forest Department from interfering in her fishing right. She also claimed a sum of Rs. 45,100/- as an alternative relief. In brief her case was that defendant-Irrigation Department had granted her lease on 29.4.1997 for a year but other defendants, employee of forest department were causing interference in carrying out her business. The plaintiff/petitioner's suit was decreed by the Trial Court on 30.11.2002 only in respect of payment of a sum of Rs. 35,100/- with 5% interest from 29.4.1997 till actual payment made. But the Trial Court refused to issue permanent injunction. The State-defendant feeling aggrieved by the said decree, preferred an appeal before the learned District Judge, which was registered as Civil Appeal No. 44 of 2003. In the appeal, the State-defendant moved an application under Order XLI Rule 27 CPC to bring some map and Government

order on the record after a gap of two years time when the appeal was pending the said application dated 14.9.2005 was filed by the respondent.

2. Learned District Judge by the impugned order dated 7.10.2005, in the interest of justice, allowed the application filed under Order XLI Rule 27 of CPC, of the State-defendant.

3. I have heard Sri Pankaj Agarwal, learned Counsel for the petitioner and Sri A.K. Yadav, learned Standing Counsel.

4. The learned Counsel for the petitioner Sri Agarwal has placed reliance on the judgment of Supreme Court in the case of K.R. Mohan Reddy Vs. Net Work Inc. rep. Tr. M.D., and P.K. Ramachandran Vs. State of Kerala and Another, . Sri Agarwal further submits that the learned appellate Court failed to consider that no reason has been assigned by the respondent as to why the document sought to be adduced, could not be adduced by them before the trial Court despite due diligence, though the same was within their knowledge, which is a pre-requisite condition for moving the application under Order XLI Rule 27 CPC. He further urged even otherwise it is the duty of the Court considering the application under Order XLI Rule 27 CPC to record reason satisfying the condition laid down for considering the application under the said provision. He further urged that the appellate Court has not recorded any reason for allowing the application of the defendant-appellant. Lastly he submits that the application was moved after almost two years while the appeal was pending. No explanation has been mentioned for filing the application after two years.

5. Learned Standing Counsel submits that the defendant-appellant/State had moved the application only to bring on record a Government order and a relevant map on the record as additional evidence. Thus there was no prejudice caused to the plaintiff/respondent and the appellate Court has exercised its discretion in the interest of justice.

6. I have considered the rival submissions of the respective parties and perused the record.

7. The plaintiff's suit was decreed only in respect of payment of compensation. The trial Court refused to issue permanent injunction. Feeling aggrieved by the judgment and decree of the trial Court the State filed the appeal and after two years an application dated 14.9.2005 (Annexure-2 to the writ petition). From the perusal of said document it is evident that no averment has been made in the application that with the best efforts such additional evidence could not have been adduced at the first instance. It is only mentioned in the application that it is necessary to bring on record those documents and the documents would clarify the position.

8. The scope of Order XLI Rule 27 CPC is well-settled in a catena of decisions of the Supreme Court and the High Courts. It is a trite law that Order XLI Rule 27 CPC is an exception to general rule that the appellate Court should not travel

outside the record of trial Court and a parity cannot be allowed to fill the lacuna in its evidence.

9. In the present case the defendant/appellant wanted to file the public documents i.e. a Government order and in its application for non-production of those documents in the trial Court no valid reason has been mentioned. It is presumed that the Government order of the department was in the knowledge of the officer concerned, but it was not filed before the trial Court. In the application also no reason has been mentioned that why the papers were not filed earlier. A party cannot claim to file additional document as a matter of right. It has to comply the ingredients of the provisions of the law. The appellate Court in a casual manner has allowed the application on the ground that taking the documents on the record is in the interest of justice without assigning any reason why additional document can be accepted at the appellate stage. It was obligatory on the appellate Court to record the reasons why it was necessary to allow the application.

10. Recently this question fell for consideration before the Supreme Court in the case of Union of India (UOI) Vs. Ibrahim Uddin and Another, . The Supreme Court held that the appellate Court has the power to allow a document to be produced but it must be limited to those cases where it reaches on the conclusion that such evidence is necessary for enabling it to pronounce judgment. The Court further held that this provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. Therefore, in absence of a satisfactory reason for non-production of the evidence in the trial Court, the additional evidence should not be admitted in appeal as a party guilty of remissness in the lower Court, is not entitled to give further evidence. The Court further observed as under;

36. The general principle is that the Appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the Court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an

opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the Court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh, and Natha Singh v. Financial Commr., Taxation.)

11. The Supreme Court has taken similar view in the cases of Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and Others, and K.R. Mohan Reddy Vs. Net Work Inc. rep. Tr. M.D., . Para-15 of the judgment in the case of K.R. Mohan Reddy (supra) reads as under;

15. The High Court, in our opinion, failed to apply the provisions of Order 41 Rule 27 of CPC in its correct perspective. Clauses (a), (aa) and (b) of sub-rule (1) of Rule 27 of Order XLI refer to three different situations. Power of the appellate Court to pass any order thereunder is limited. For exercising its jurisdiction thereunder, the appellate Court must arrive at a finding that one or the other conditions enumerated thereunder is satisfied. A good reason must also be shown as to why the evidence was not produced in the trial Court.

12. In the present case the finding of the appellate Court is skeletal and without any reason. The recording of the reason is essential feature of dispensation of justice. The Supreme Court in the case of Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers, , has said a litigant is entitled to know the reason for grant or rejection of his prayer. The reasons are the soul of orders. In case a reason is not recorded, it may cause prejudice to the affected party and secondly it hamper the proper administration of justice. These principles have been extended by the Supreme Court to administrative and the executive actions also. These principles apply with equal force and in fact with greater degree of rescission to judicial pronouncement.

13. After careful consideration, I am of the view, that the appellate Court has not considered the application moved by the defendants in proper perspective. The order of the appellate Court, for the aforesaid reasons, needs to be set aside. Accordingly, it is set aside. The matter is remitted to the appellate Court to consider the application of the defendants/State afresh in the light of the judgments mentioned hereinabove.

14. Thus, writ petition is allowed. No order as to costs.