
(2007) 04 P&H CK 0012
In the Punjab And Haryana At Chandigarh

Smt. Sushil Rani	Vs	APPELLANT
Attam Parkash		RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 17

Citation : AIR 2007 P&H 142 : (2007) 2 CivCC 796 : (2007) 146 PLR 595 :
(2007) 3 RCR(Civil) 396

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The challenge in the present revision petition is to the order passed by the learned trial Court dated 17.5.2004, whereby an application filed by the plaintiff to submit the accounts and bahi entries for the inspection of the Court was declined.

2. The plaintiff has filed a suit for recovery of Rs. 1,38,806/- on the basis of bahi entries inclusive of interest thereon. Alongwith the plaint, the plaintiff has attached a photocopy of the bahi entries duly signed by the plaintiff as true copies thereof. On an objection being raised by the defendants that original bahi entries have not been produced, the plaintiff moved an application for submitting the bahi entries, which has since been declined by the learned trial Court.

3. Learned trial Court has found that the present application has been filed by the plaintiff only after such objection was raised by the defendant in his written statement. Therefore, there is no sufficient compliance of Order 7 Rule 17 of the Civil Procedure Code, 1908 (hereinafter referred to as the code).

4. learned Counsel for the petitioner has vehemently argued that the petitioner has substantively complied with the provisions of Order 7 Rule 17 of the Code at the time of filing of the plaint. The plaintiff has sought to produce original copies of the bahi entries soon after the objection was raised by the defendant in his

written statement. It is contended that the provisions of Order 7 Rule 17 of the Code are the rules of procedure and such provisions are directory. Reliance is placed upon Mr. Shaikh Salim Haji Abdul Khayumsab Vs. Mr. Kumar and Others, " and S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others, ". In Sardar Amarit Singh Kalra's case (supra), it has been held to the following effect:

Law of procedure are meant to regulate effectively, assist and aid the objection of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.

5. In Shaikh Salim 's case (supra), the Hon''ble Supreme Court of India, while dealing with the provisions of Order 8 Rule 1 of the Civil Procedure Code, contemplating filing of written statement with the time framed, held to the following effect:

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress of legal justice compels consideration of vesting a residuary power in Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. See: Sushil Kumar Sen v. State of Bihar.

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. See: Blyth v. Blyth. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See: Shreenath v. Rajesh).

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural Prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of Justice.

6. In view of the above judgments wherein it has been held that the procedure is handmaid and not the mistress, a lubricant, not a resistant in the administration of justice, the plaintiff cannot be denied an opportunity of participating in the justice only because the original bahi entries were not produced alongwith the plaint. By non production of the original bahi entries no right of the defendant has been infringed. It was rule of procedure and such rule of procedure is always subservient to and is in aid of justice. It is not to be a tyrant but a servant, not an obstruction but an aid of justice. Therefore, substantive right of the plaintiff to recover the amount due in accordance with law, cannot be defeated on the basis of procedure which is prescribed only to advance the cause of justice.

7. learned Counsel for the respondent has relied upon a judgment of this Court in Som Parkash Bansal Vs. Managing Committee, Hindu Higher Secondary School and Another, , to contend that in the absence of compliance of provisions of Order 7 Rule 17 of the C.P.C., the suit is not maintainable. However, the said judgment provides little assistance to the respondents as that was a case where the impugned order was not produced either with the plaint or during evidence. The said judgment is clearly distinguishable and has no applicability to the facts of the present case.

8. In view thereof, the present revision petition is allowed. The order passed by the learned trial Court dated 17.5.2004 is set aside. The plaintiff is permitted to submit the accounts and bahis entries for the inspection of the Court.

9. Parties through their No. 1 are directed to appear before the learned trial Court on 21.5.2007 for further proceedings in accordance with law.