

(1964) 01 AHC CK 0014
In the Allahabad High Court
Case No : F.A.F.O. No. 291 of 1962

Sri Krishna Banwari Lal and Others

APPELLANT

Vs

Behari Lal Sri Krishna and Another

RESPONDENT

Date of Decision : 07-01-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : AIR 1964 All 516

Hon'ble Judges : H.C.P. Tripathi, J;B.D. Gupta, J

Bench : Division Bench

Advocate : S.N. Varma and Majnuddin, for the Appellant; G.P. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

Tripathi, J.—This is a defendants first appeal directed against an order of the 1st Additional Civil Judge Kanpur, dated 2-6-1962 granting the plaintiff's application for review,

2. The plaintiffs-respondents instituted a suit (suit No. 43 of 1960) in the Court of 1st Civil Judge, Kanpur, against the defendants-appellants and the respondent No. 2 for the recovery of a sum of Rs. 12,000/- with interest pendente lite and future, on the assertion that there were dealings between the plaintiffs and the defendants since long, that the defendants used to purchase goods through the plaintiffs firm, that the accounts between the parties were first squared up in sambat 2014 corresponding to year 1957 that the dealings between the parties continued even thereafter, that on the basis of entries during the period 28-10-1857 to 18-8-1959 in the account books of the plaintiffs which have been accurately maintained in the regular course of their business a sum of Rs. 12,000/- consisting of Rs. 11497.12.0 on account of principal, Rs. 500.1.6 on account et interest, and Rs. 2.2.6 on account of discount on a Hundi drawn on the defendants but not honoured by them, was due to the plaintiffs for which the defendants were liable and that a true copy of accounts had been sent each year

to the defendants who had admitted the correctness of plaintiffs accounts.

3. Defendants 3 and 4 on their own behalf and as partners of the defendant No. 1 contested the suit inter alia on the allegations that the dealings between the parties commenced in Sam bat year 2004, that the accounts were never squared up since that year, that the plaintiffs never gave any statement of their accounts to the defendants despite repeated demands, that the entries in the plaintiffs' account books on which their claim was founded were fictitious, that the defendants had never agreed to pay interest or any incidental charges to the plaintiffs, that the payments made by the defendants to the plaintiffs used to be in excess of their actual dues, and, that according to the entries in the defendants account books which were kept in the usual course of business a sum of Rs. 6235.11.6 was due to the defendants from the plaintiffs. Respondent No. 2 who was defendant No. 2 before the trial Court had filed a separate written statement in the suit and had asserted therein that he was never a partner of the defendant firm and had no dealings with the plaintiffs and as such no amount was due from him and the plaintiffs claim against him was frivolous and vexatious.

4. Necessary issues arising out of the pleadings were framed by the trial Court and the parties led evidence and addressed arguments in support of their respective contentions. The learned Civil Judge by his judgment dated 21-12-1961 held that the plaintiffs were not entitled to the reliefs claimed and consequently dismissed the suit with costs.

5. On 6th of January, 1962, the plaintiffs-respondents filed an application under Or. XLVH Rule 1 of the C.P.C. before the learned Civil Judge praying that the judgment and decree dated 21-12-1961 passed in the suit be reviewed and the documents filed along with the application be admitted in evidence. This application for review was primarily based on the following grounds

(i) Exhibit three, a letter addressed by the defendants to the plaintiffs which was on the record of the suit and had been relied upon by the defendants as well clearly proved the liability of the defendants to pay interest to the plaintiffs, but, the full contents of this document escaped the notice of the Court, which amounted to a mistake apparent on the face of the record.

(ii) The entries in the account books filed by the defendants in the case substantiated a major portion of the plaintiffs' claim, but they escaped the attention of the Court, although the books were on record and had been exhibited in evidence. This, according to the applicants, was a sufficient reason in law for review of the decree.

(iii) The applicants had discovered new and important evidence which were exhibits 1 to 4 filed along with the review petition and which, even after the exercise of due diligence, they could not produce at the time when the decree was passed.

6. Defendants appellants filed objections to the plaintiffs application and asserted that the pleas raised in their application did not disclose any valid ground for review of the decree passed in the suit.

7. In support of the contention regarding the discovery of new and important evidence, Lakshmi Narain the Munim of the plaintiffs and Sidh Nath Shukla, their correspondence Clerk, filed affidavits and examined themselves in evidence before the trial Court. No evidence was produced in rebuttal by the defendant appellants.

8. The learned Civil Judge on an appraisal of the evidence produced by the plaintiffs-respondents came to a conclusion that Ex. 3 which was already on the record of the original suit did prima facie indicate that interest was payable by the defendants but it escaped his notice at the time of the decision of the suit. The learned Judge, therefore, was of the opinion that the omission on his part to have considered the entire contents of this document was certainly an error apparent on the face of the record. In regard to the second contention of the plaintiffs-applicants that the defendants account books themselves substantiated a major portion of their claim it appears from a perusal of the order under appeal that a detailed chart was prepared by the plaintiffs-respondents on the basis of entries in the defendants account books which prima facie indicated that a substantial amount was due to the plaintiffs from the defendants. The appellants did file objections to the said chart, but they did not challenge the correctness of the entries therein or the amount of interest calculated thereon. The learned Civil Judge, therefore, was of the view that in the circumstances of the case, his omission to consider the entries in the account books filed by the defendants, while deciding the case on merits, was a sufficient cause to review the judgment. In respect of the plaintiffs-respondents' contention regarding the discovery of documents, the trial Court held that those documents were important and material for the case and that they were discovered, on, 31-10-1961 and were not available for being filed when the judgment was passed.

9. On these findings the learned Civil Judge allowed the application for review subject to payment of Rs. 100/- as costs to the defendants-appellants and directed the original suit to be put up for re-hearing.

10. Aggrieved by the order granting review the defendants, other than defendant No. 2, came up in appeal which was first listed before a learned Single Judge of this Court. When the hearing of the appeal opened before the learned Single Judge, a preliminary objection was raised by the learned counsel for the respondents that the appeal was competent only in respect of alleged contravention of Clause (b) of the proviso to Or. XLVII Rule 4(2), and that it was not open to the appellants to challenge the finding that there was error apparent on the face of the record. The learned Single Judge was of the view that there was divergence of judicial opinion as to the interpretation of Order XLVII Rules 4 and 7 of the Code and it was desirable to have the case decided by a larger Bench. He, therefore, referred the case to a larger Bench. That is how

the case is before us today.

11. We have heard the learned counsel to the appellants at considerable length. Learned counsel for the respondents has conceded before us that in view of the fact that the review has been allowed also on the ground of the discovery of new and important evidence, this appeal is maintainable. In view of this concession I do not deem it necessary to discuss the preliminary objection raised before the learned Single Judge and proceed to decide the appeal on merits.

12. Learned counsel for the appellants hastrenuously contended that there was neither any error apparent on the face of the record nor there was sufficient cause to justify a review of the decree passed by the trial court. I am unable to agree with this contention.

13. Ex. 3 on the record of the original suit is a letter addressed by the defendants-appellant to the plaintiff firm. By this letter a demand has been made by the defendants for a copy of the defendants' accounts as entered in the plaintiffs account books and it has been stated that the account should be sent to them along with interest accrued thereon. The learned Civil Judge has relied on this letter as indicating prima facie the defendants' admission of liability for payment of interest to the plaintiffs. The learned Civil Judge has also observed that the defendants account books coupled with Ex. 3 of the original suit brought to his notice would have lent support prima facie to a substantial portion of the plaintiffs claim and his failure to take them into account was an error apparent on the face of the record. I do not find any reason to disagree with this finding.

14. Omission on the part of a Court either due to its inadvertence, or on account of the failure of the counsel to draw its attention to consider material pieces of evidence on the record affecting the merits of the case has always been held either an error apparent on the face of the record or as sufficient cause for justifying interference by way of review.

15. In the case of Smt. Jamna Kuer v. Lal Bahadur AIR 1950 FC 131 it was held that

"Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision, We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry."

16. In the case of M.M.B. Catholicos v. M.P. Athanasius AIR 1954 SC 526 the Supreme Court inter alia observed as follows:

"The cases to which the reference has been made indicate that the misconception of the Court must be regarded as sufficient reason analogous to an error apparent on the face of the record."

17. In the case of Raghbir Gir Vs. Badam Gir, a Division Bench of this Court has held that where there was an error in the original order of a Civil Judge which appeared to have been passed with pointed attention towards the question of saleability of certain houses as such without any particular attention to the saleability of the site, the error could be said to be analogous to an error apparent on the face of the record within the meaning of Order XLVII Rule 1 C.P.C. Hon'ble Raghbar Dayal. J., delivering the judgment of the Division Bench, quoted with approval the following observations of another Division Bench made in the case of Narain Das and Others Vs. Chiranji Lal, :-

"In our opinion, the words for any other sufficient reason" in Order 47 Rule 1 are not only very wide in themselves, but were intentionally so made by the legislature, because of the possibility of exceptional cases arising in which obvious injustice would be worked by strict adherence to the terms of the decree as originally passed. We are not prepared to hold that the Court below was outside its jurisdiction in passing the order now under appeal."

18. In the case of Naurata v. Anokha AIR 1954 Pepsu 85 it was held by a Division Bench that when important documentary evidence already on record was not brought to notice of Court and referred to by either party, when the appeal was heard all the same the documents being already there, the error is apparent on the face of the record, which an error whether it occurs by reason of the counsel's mistake or it creeps in by reason of an oversight on the part of the Court can always be a good ground for exercise of the Jurisdiction of the Court to reverse its decision.

19. In view of these decisions I am clearly of opinion that the findings of the learned Civil Judge that his omission to consider the entire contents of Ex. 3, which was a material document, was an error apparent on the face of the record and his failure to take into account the entries in the defendants' account books while deciding the question of their liability towards the plaintiffs was a sufficient reason within the meaning of Order XLVII Rule 1 of C. P.C. are perfectly correct and do not (sic) any interference in appeal.

20. As regards the ground relating to the discovery of new and important evidence on which also the order granting review is based, I do not consider it necessary to express any opinion as I am satisfied that the order passed by the Judge does not call for any interference.

21. The view that I have taken in the case does not render it necessary for me to go into the question of the interpretation of the word "strict proof" as occurring in Order XLVII Rule 4(2) (b) of the C.P.C.

22. As a result of my opinion, I shall dismiss this appeal, but in the circumstances of the case, I shall make no order as to costs.

Gupta, J.

23. I agree with the order proposed by Hon. Tripathi, J.

BY THE COURT:

24. The appeal is dismissed, but in the circumstances of the case we make no order as to costs.