

(2017) 11 MP CK 0009
In the Madhya Pradesh High Court
Case No : 7809 of 2017

State of MP through Police Station Gyaspur	APPELLANT
Vs	
Deepak, S/o Narayan Singh	RESPONDENT

Date of Decision : 08-11-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#), [Section 151](#), [Order 26 Rule 9](#) Order 26 Rule 9, [Order 26 Rule 9](#) Order 26 Rule 9 - Civil of India, — Article 227

Citation : (2017) 11 MP CK 0009

Hon'ble Judges : Sujoy Paul

Bench : Division Bench

Advocate : H.S. Rajput, Pradeep Sharma

Final Decision : Allowed

Judgement

1. In this petition filed under Article 227 of the Constitution of India challenge is made to the order dated 08.05.2017 (Annexure-P-1) whereby the application filed by the respondents/plaintiffs under Order 26 Rule 9 read with Section 151 of the CPC (Annexure-P-4) is allowed by the court below.

2. Shri Rajput, learned counsel for the petitioners, submits that the present petitioners/defendant filed a detailed reply to the application preferred under Order 26 Rule 9 r/w Section 151 CPC. The court below without assigning any reason as to why stand taken by the defendants is not trustworthy, allowed the said application. Thus, order is bad in law..

3. Shri Sharma, learned counsel for respondent Nos. 1 to 4, supported the impugned order and submits that in the facts and circumstances of the case, the court below has not committed any error in allowing the said application.

4. No other point is pressed by learned counsel for the parties.

5. I have heard learned counsel for the parties at length and perused the record.

6. The reply filed by the present petitioners dated 25.03.2017 shows that the petitioner has taken certain grounds and prayed that the application of the plaintiff be rejected. A plain reading of the impugned order shows that the court below has not assigned a single reason as to why the stand taken by the present petitioners did not impress the court. Putting it differently, the court below has reached to a conclusion for issuance of writ of commission without assigning any reason regarding the reply filed by the present petitioners.

7. This is trite law that reasons are heart beat of conclusion. In absence of reasons, in administrative, quasi-judicial and judicial orders cannot sustain judicial scrutiny.

8. The Apex Court in the case of M/s Kranti Associates Pvt. Ltd. and another vs. Masood Ahmed Khan and others emphasized the need of assigning reasons in administrative, quasi judicial and judicial proceedings. The relevant portion reads as under:-

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her

decision making process then M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors on 8 September, 2010 it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons" is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

9. In the light of principles laid down in the case of Kranti Associates (supra), the impugned order dated 08.05.2017 cannot be countenanced. Since court below has not assigned reasons, the order dated 08.05.2017 to the extent application under Order 26 Rule 9 r/w Section 151 of the CPC was allowed is set aside. The court below is directed to rehear the parties on the said application and decide it in accordance with law within 30 days from the next date of hearing.

10. With the aforesaid findings, the petition is allowed. No cost.