
(2000) 01 AHC CK 0037
In the Allahabad High Court
Case No : Civil Revision No. 6 of 2000

Sureya Prakash	Vs	APPELLANT
Raghuvir Saran Agarwal and others		RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 5, 5

Citation : (2000) 2 AWC 1108

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Navin Sinha and Vipin Sinha, for the Appellant;

Judgement

D.K. Seth, J.—The defendant-revisionist sought for disclosing of particulars by the plaintiff by means of an application. By an order dated 19.5.1999 passed by the learned Civil Judge. Senior Division, Bareilly in Original Suit No. 151 of 1998 rejected the said application of the defendant-revisionist. Against the said order Civil Revision No. 92 of 1999 was preferred before the learned District Judge. Bareilly. By an order dated 6.11.1999. the learned District Judge dismissed the said revision on the ground of Jurisdiction inasmuch as the valuation of the suit was beyond pecuniary Jurisdiction of the learned District Judge. Therefore, this revision has been preferred along with Section 5 application for condonation of delay on the ground that on mistaken advice the petitioner had been prosecuting revision before the learned District Judge.

2. After hearing learned counsel for the revisionist, the delay Is condoned.

3. Order VI, Rule 5 provides that where the Court thinks just, it may ask for better statement of the nature of the claim or of the defence or It may ask for further and better particulars of any matter stated In any pleading. Thus, it appears to be applicable In a case where the pleadings are vague. In AH v. Gobind. ILR Col 840 ; Faqlr v. Thakur. A 1941 457, it was held that if the pleadings of either party be too vague, the Court may require him to file further

or full statement. But this provision cannot be used for the purpose of fishing out evidence nor it can be used as a guise for delivery of interrogatories. Better particulars are normally asked for at the time of discovery and Inspection as provided in Order XI. Though however, there is no hard and fast rule whether asking better particulars are to precede discovery and vice versa. It is a matter dependant on the discretion of the Judge to be exercised after consideration of the special circumstances In each case as has been held In *Waynes Mmerthyr and Co. v. Radford and Co.* 1896 (1) Ch D 29 and *Miller v. Harper* 1888 (3) Ch D 110 . There being no provision prohibiting resorting to provision of Order XI Rule 1, absence of compliance with Order VI, Rule 5 cannot be fatal as is held in *Bhakta Charan Mallik Vs. Nataorar Mallik and Others*,

4. The power conferred under Order VI, Rule 5 Is in the discretion of the Court and if on examination, the Court does not find it necessary to allow. It cannot be assailed as a right of the parties. However, such discretion is to be exercised judicially. In revision, the revisional court is supposed to examine the facts and circumstances, as to whether the Court had exercised Its Jurisdiction legally and properly within the scope or ambit within which the revisional court can interfere. It is not supposed to lightly interfere with the order passed by the trial court disallowing or allowing the better particular under Order VI, Rule 5.

5. Having perused the order dated 19.5.1999 passed in Original Suit No. 151 of 1998 passed by learned Civil Judge, Senior Division, Bareilly. it appears that the defendants had asked for better particulars under Order VI. Rule 5 of C.P.C. with regard to certain clarification. The learned Civil Judge had found that defendant has been alleged to be a licensee and that certain statements have been made in paragraph 3 of the plaint. After examining the plaint, the learned Civil Judge found that there was no necessity for asking better particulars on the basis of the statement made in the plaint. On this ground, he had rejected the application of defendant and had directed filing of written statement.

6. Order 6. Rule 5 of the CPC provides that a further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just. Thus, it appears that it is for the Court to ask better particular either of the claim or defence, if it seems Just by the Court. The Court having examined the claim and having come to a decision not to call for better particular at this stage, it is not open to the defendant to ask any particular before he submits his written statement. In such circumstances having regard to the facts and circumstances of the case as well as the provisions contained in Order VI, Rule 5 of the Code, I do not Rnd it a fit case for Interference at this stage.

7. The revision fails and is accordingly dismissed. However, there will be no order as to cost.