
(1999) 03 KAR CK 0034

In the Karnataka High Court

Case No : Civil Revision Petition No. 162 of 1999

Syed Beri alias Chayyabba

APPELLANT

Vs

Ahmad Beri

RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115

Citation : AIR 1999 Kar 329 : (1999) 4 CivCC 405 : (1999) 3 KarLJ 316

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri B. Lakshmesha Rao, for the Appellant; Sri B.K. Manjunath, for the Respondent

Judgement

1. Parties herein are brothers. The respondent-elder brother had earlier filed a suit for permanent injunction in respect of a house property against the petitioner, the younger brother. That was in the year 1988. After the parties spent two years in litigating, the respondent-plaintiff sought for and was permitted to withdraw the suit with liberty to file a fresh suit with respect to the same subject-matter, but, subject to payment of costs to the petitioner-defendant. The costs were not quantified. It was incumbent upon the respondent-plaintiff to comply with the said direction relating to payment of costs if necessary, even by asking the Court to quantify the same before the institution of the subsequent suit. However, without compliance in that regard, respondent-plaintiff filed the subsequent suit. Petitioner-defendant, therefore, sought rejection of the plaint under Order 7, Rule 11 of the CPC. The Trial Court has negated the petitioner-defendant's claim. Hence, this revision petition u/s 115 of the CPC.

2. Sri Lakshmesha Rao, learned Counsel for the petitioner refers to a decision of this Court in Chikkahanuma alias Mota v Venkatamma and Others, to urge that, in such circumstances, there was absolutely no question of the second suit being entertained. Sri B.K. Manjunath, learned Counsel for the respondent-plaintiff,

however, refers to a decision of the Supreme Court in *Konkan Trading Company Vs. Suresh Govind Kamat Tarkar and Others*, wherein the said decision of this Court in *Chikkahanuma's* case, *supra*, also is considered. The Supreme Court has emphasised on the justice oriented approach in dealing with the matter like the present one. In that view of the matter, the Supreme Court has found what the Trial Court had done to be correct viz., though the costs of Rs. 500/- as directed to be paid at the time the earlier suit was permitted to be withdrawn with liberty to file fresh suit, had not yet been paid at the time the subsequent suit was filed, still, extension of time had been prayed for in that regard and the said costs had been paid and as such, there was no warrant for taking a hypertechnical rigid view, which would result in denying to a person access to justice and deprive him of his legal rights, more so, when it was possible to take a liberal view which promoted the ends of justice. In the present circumstances also, looking at the matter from the said perspective that the Supreme Court emphasised, I am of the opinion that, at least now, the respondent-plaintiff could be directed to pay costs in respect of the earlier suit. As earlier said, the said costs had not been quantified while giving liberty to the respondent-plaintiff to withdraw the suit. Having regard to the fact that parties are brothers, that the respondent-plaintiff is the elder brother and that the petitioner-defendant had been unnecessarily made to spend two years in litigation, I am of the opinion that, it would be just and proper if the costs are quantified at Rs. 3,000/-. The respondent-plaintiff is directed to pay the said sum of Rs. 3,000/- to the petitioner-defendant under a receipt, or deposit in the Trial Court with liberty to the petitioner-defendant to withdraw the same, on or before 15th of April, 1999. It is submitted that the suit at present has stood posted to 9th March, 1999. The Trial Court shall have it adjourned to 15-4-1999. When the suit is called on 15-4-1999, the Trial Court shall ascertain if the said sum of Rs. 3,000/- is paid or deposited. If it is paid or deposited by that date, it shall proceed to deal with the suit in accordance with law. If it is not so paid or deposited as on that date or at least on that day, if the said sum of Rs. 3,000/- is not offered in cash to the petitioner-defendant, then, the plaint shall be treated as having been rejected under Order 7, Rule 11 of the CPC and the Trial Court shall record to that effect and dispose of the matter.

3. In the event the costs are so paid and the suit is to be proceeded with, the petitioner-defendant shall have the liberty to contend even by amending the written statement already filed, that the suit is barred by limitation. Both the learned Counsel have argued at length on the question of limitation, but, I have not gone into the same. As and when such contention is taken, necessarily an issue has to be raised with regard to limitation and it is for the Trial Court to decide that issue on merits and in accordance with law.

4. Revision petition disposed of accordingly.