

(1964) 09 KAR CK 0013

In the Karnataka High Court

Case No : Civil Revision Petition No. 1121 of 1963

T.C. Malleshappa

APPELLANT

Vs

Firm of Sha Veerchand Pratapmal and Another

RESPONDENT

Date of Decision : 01-09-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 13, Order 9 Rule 7, 151

Citation : AIR 1965 Kar 300 : (1965) 1 MysLJ 297

Hon'ble Judges : Ahmed Ali Khan, J

Bench : Single Bench

Judgement

(1) The question for determination in this case is whether this application which has been put in for the revision of an interlocutory order passed under O. IX, R. 7 of the Code of Civil Procedure, should be entertained.

(2) The material facts bearing on the point are as follows:

The petitioner is defendant No. 2 in O.S. 6/1960 on the file of the Civil Judge's Court, at Bellary. He did not appear when the suit was called for hearing on the date originally fixed for the trial, and he was declared ex parte on 5-1-1961. Evidence was recorded on that day, and the date for judgment was fixed for 6-1-1961, and then for 18-1-1961, and the suit was finally disposed of on the 19th of January 1961. On the 18th of January he applied to the Court to set aside the order declaring him ex parte and permit him to contest the suit on merits. That petition came up for hearing and was dismissed the application under O. IX, R. 7, this revision petition is preferred on 6-11-1963.

(3) The petitioner's learned Advocate says that no steps have been taken by the defendant either by way of appeal or an application under O. IX, R. 13 of the Code of Civil Procedure, to have the ex parte decree set aside and the only application made on his behalf is against the order of 18-1-1961 refusing to grant him leave to defend the suit. But he contended that the same application, viz., I.A. No. 58/61 in O.S. 6/60 was made under Order IX, rule 7 read with rule

13 and section 151 of the Code of Civil Procedure. He submits that on 5-1-1961 the petitioner was declared ex parte and on that very date evidence was recorded and the Court reserved the judgment. He argues that the opening words of Order IX, rule 7 of the Code of Civil Procedure, that "where the Court has adjourned the hearing of the suit ex parte....." indicates that there is to be a hearing on the date on which the suit stands adjourned. If the "hearing" of the suit has been completed and the Court adjourns the suit merely for the purpose of pronouncement of judgment, there is clearly no adjournment of the "hearing of the suit", for there is nothing more to be heard in the suit. If, therefore, the hearing was completed and the suit was not adjourned for hearing, order IX, rule 7, could have no application. According to the learned counsel, having regard to the stage which the suit had reached, the only provisions which are applicable to the proceeding are those provided for by order IX, rule 13. He urged that though the application was made to set aside the order dated 5-1-1961 declaring the petitioner ex parte, since reference has been made therein to rule 13 of Order IX of the Code of Civil Procedure, the Court below was wrong in holding the same unentertainable. In support of his contention, he relies on a decision of the Supreme Court in Arjun Singh Vs. Mohindra Kumar and Others, . The alternative suggestion is that the application filed on 18-1-1961 to set aside the order declaring the petitioner ex parte was made under Order IX, rule 7 read with R. 13 and S. 151 of the CPC and it is submitted that if the provisions of R. 13 were inapplicable, the Court had inherent jurisdiction saved by S. 151 of the CPC to entertain the application. He urged that even now in revision resort can be had to the inherent power of this Court to secure the ends of justice.

(4) The first contention advanced by the learned counsel for the petitioner is not possible of being substantiated on the basis of the ruling relied upon by him. A reading of the judgment therein clearly indicated that their Lordships did not depart from the principle stated in an earlier case in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , in regard to the scope of a proceeding under O. 9, R. 7 and its place in the scheme of the provisions of the Code relating to the trial of suits, and their Lordships have pointed out that after the decree is passed, O. 9, R. 13 becomes applicable which is a specific statutory remedy provided by the Code. Moreover, in the aforesaid decision Arjun Singh Vs. Mohindra Kumar and Others, , the application which was under consideration before their Lordships was one which had been filed under O. 9, R. 13 of the Code of Civil Procedure, to set aside an ex parte decree passed against the appellant in that suit on September 25, 1958. Therefore, the decision of the Supreme Court, relied upon by the petitioner cannot be helpful to him in any way.

(5) The same decision which has been relied upon on behalf of the petitioner is a complete answer to the second contention that resort could be had to the inherent powers contained in S. 151 of the Code of Civil Procedure. An argument was advanced on behalf of the appellant in that case that even if O. 9, R. 7 was inapplicable, the Court had inherent jurisdiction saved by S. 151 of the Code to

entertain the application. But, repelling the said contention, their Lordships observed:

"There is one other aspect from which the same question could be viewed. Order 9, R. 7 prescribes the conditions subject to which alone application competent under the opening words of that rule ought to be dealt with. Now, the submission of Mr. Pathak if accepted, would mean to ignore the opening words and say that though specific power is conferred when a suit is adjourned for hearing, the Court has inherent power even when (a) it is not adjourned for that purpose, and (b) and this is of some importance, when the suit is not adjourned at all, having regard to the terms of Order 20, Rule 1. The main part of Order 9, Rule 7 speaks "of good cause being shown for non-appearance" on a previous day. Now what are the criteria to be applied by the Court when the supposed inherent jurisdiction of the Court is invoked? Non-constant it need not be identical with what is statutorily provided in R. 7. All this only shows that there is really no scope for invoking the inherent powers of the Court. Lastly, that power is to be exercised to secure the ends of justice. If at the stage of R. 7 power is vested in the Court and after the decree is passed O. 9, R. 13 becomes applicable and the party can avail himself of that remedy, it is very difficult to appreciate the ends of justice which are supposed to be served by the Court being held to have the power which the learned Counsel says must inhere in it."

(6) In my opinion, the revisional powers of the High Court can be invoked only when there are no other sufficient remedies open for the aggrieved party. In this case the decree passed in the suit was on 19-1-1961, viz., on the next day after the order which is sought to be revised, was passed. It was open to the defendant to have applied under O. 9, R. 13 of the CPC to set aside that order. It was also open to him to prefer an appeal from the ex parte decree and in such appeal the question whether the lower Court was wrong in proceeding to decide the suit ex parte could be gone into and if the appellate Court comes to that conclusion it can be remand the suit for retrial. Instead of resorting to the remedies which were open to him under the Code, the defendant has put in this revision petition. It is argued by the learned Advocate for the petitioner that this petition should be entertained as hereafter it will be too late for the petitioner to prefer either an application under O. 9, R. 13 or an appeal against the decree itself. I fail to see how the applicant's clear neglect to avail himself of the remedies open to him gives him a better right to apply to this Court to exercise its powers of revision. The learned Advocate says that it was under legal advice the petitioner preferred the present application and abstained from pursuing other remedies which were open to him. I do not see how that consideration can effect the entertaining of his application, whatever bearing it may have on the question whether if hereafter he prefers either an appeal or an application under O. 9, R. 13 for getting the ex parte decree set aside. It may be open to the Court which hears that application to excuse the delay in the presentation of such an application or appeal, if sufficient cause is shown to its satisfaction. But, so far as I can judge, it has little bearing on the question whether this revision petition

should be entertained. To interfere at this stage and to set aside the order sought to be revised, will serve no useful purpose unless it will have the effect of setting aside the decree also. To hold that the order will have such an effect will tantamount to abrogating the provisions of the CPC under which decrees passed in Courts including those passed ex parte can be set aside only by resorting to the appropriate remedies provided in the Code and not otherwise.

(7) For the reasons stated above, I dismiss the revision petition with costs.

(8) Revision dismissed.