
(1995) 09 P&H CK 0030
In the Punjab And Haryana At Chandigarh

The Punjab State Cooperative Milk Producers Federation
Limited (Milkfed)

APPELLANT

Vs

M.M. Munjal

RESPONDENT

Date of Decision : 07-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2

Citation : (1996) 112 PLR 181

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : P.S. Patwalia, for the Appellant; H.S. Mattewal and R.S. Riar, for the Respondent

Judgement

Ashok Bhan, J.—Under what circumstances an issue regarding res judicata can be tried as a preliminary issue is a question to be decided in this revision petition.

2. Plaintiff-respondent (hereinafter referred to as the respondent) was reverted from the post of Chief Manager (Engineering and Projects) to the post of Manager (Engineering and Projects) now redesignated as Manager (Engineering) on 3.12.1990. Aggrieved against his reversion, respondent filed C.W.P. No. 3718 of 1991 challenging the order of reversion dated 3.12.1990, subsequent fixation of his pay vide order dated 27.12.1990 and the resolution of the Board of Directors passed against the respondent vide Agenda Item No. 9.5 dated 16.8.1990. After issuing notice of motion and hearing the parties, this Court dismissed the writ petition by passing the following order:-

" Considering the position as clarified in the return, no occasion arrived to grant the relief claimed.

5.9.1991. Dismissed."

3. Defendant-petitioner (hereinafter referred to as the petitioner) filed its written statement in the suit and took a preliminary objection to the effect that since the writ petition for the same cause of action stood dismissed after hearing the

parties, the subsequent suit on the same cause of action was barred by the principles of res judicata. Issue No. 3 was to the effect as to whether the suit was barred by the principles of res judicata. Trial Court at the first instance ordered that the issue regarding res judicata be decided as a preliminary issue. Later on by the impugned order, trial Court ordered that issue regarding res judicata be not tried as a preliminary issue and ordered the same to be tried along with the other issues. The reason given is that issue regarding res judicata is a mixed question of law and fact which would require taking of evidence and, therefore, could not be tried as a preliminary issue.

4. In the backdrop of these facts, present revision petition has been filed by the defendant-petitioner challenging the impugned order with a prayer that the issue regarding res judicata be tried as a preliminary issue.

5. Relying upon the Full Bench judgment of this Court in Teja Singh v. The Union Territory of Chandigarh and Ors. (1982)84 P.L.R. 160 Mr. P.S. Patwalia counsel for the petitioner argued that where a writ petition has been dismissed after contest between the parties or a particular cause of action then such decision would operate as res judicata in any other proceeding such as suit or a petition under Article 32 of the Constitution of India, that petitioner had earlier filed a writ petition challenging the orders in the suit claiming the same relief which had been prayed for in the civil writ petition which had been dismissed by this Court and, therefore, the suit was not maintainable, that the certified copy of the writ petition, written statement and the order passed by this Court can be placed on record by way of an affidavit which can be compared by the Court with the pleadings of the parties in the civil suit and decide the issue regarding res judicata; that if issue No. 3 is ordered to be tried along with the other issues, it would unnecessarily delay the proceedings in the suit which would not be to the benefit of either of the parties.

6. As against this, learned counsel appearing for the respondent relying upon Smt. Ram Kali and Ors. v. Sohan Lal 1984 P.L.R. 600 contended that if any evidence is required to be taken on an issue which may even be of formal nature then such an issue cannot be tried as a preliminary issue and has to be tried along with the other issues.

7. Counsel for the parties have been heard.

Order 14, Rule 2, C.P.C. provides as under:-

"2. Court to pronounce judgment on all issues:

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

This rule provides that where issues both of law and fact arise in the same suit and the Court is of the opinion that the suit can be disposed of an issue of law only then the same can be tried as a preliminary issue provided it relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. In this case, plea of the petitioner is that the suit would be barred by a bar to the suit created by the principle of *res judicata*. Principle of *res judicata* is that where a Court of competent jurisdiction has determined the controversy after hearing the parties or the parties claiming through them the subsequent on the same cause of action between the parties is barred. Respondent had filed a civil writ petition in this Court which had been dismissed. Case of the petitioner is that the relief claimed in the writ petition filed in this Court was directly and substantially the same which has been claimed in the suit. Teja Singh's case (*Supra*) provides that where a writ petition has been dismissed after hearing the parties then the subsequent suit in the same cause of action would be barred. The evidence required on such an issue would be minimal i.e. a certified copy of the pleadings of the parties in the writ petition can be placed on record by way of an affidavit and the trial Court after going through the pleadings of the parties and the order passed by the High Court can determine as to whether the suit is barred by the principle of *res judicata* or not. No useful purpose would be served by postponing this issue and tried with the other issues as it might prolong the litigation unnecessarily.

8. No doubt the question of *res judicata* is a mixed question of law and fact which may necessitate taking of evidence also in the given facts of a case. It would depend on the facts and circumstances of each case as to whether the issue of *res judicata* tried as a preliminary issue or not. I am reframing myself from making any comments on the merits of the controversy as to whether the suit would be barred by *res judicata* or not because the observations made by me may prejudice either of the parties to the suit. The facts in *Smt. Ram Kali's* case (*Supra*) were different from the present case. In this case, the pleadings in the writ petition and the order passed by the High Court in the writ petition has to be examined as to whether the suit is barred by the principle of *res judicata* or not. Certified copies of the pleadings and the order passed by the High Court can be produced by the parties through affidavits which can be taken as evidence which would decide as to whether the suit is barred by the principle of *res judicata* or not. The evidence which is to be recorded under the circumstances would be minimal and save a lot of botheration of the parties in the given facts and circumstances of the present case.

9. For the reason stated above, this revision petition is allowed, the impugned order of the trial Court is set aside. Trial Court is directed to try issue No.3 regarding res judicata as preliminary issue. No costs.

10. Parties through their counsel are directed to appear before the trial Court on the date fixed.