

(1967) 02 GUJ CK 0004

In the Gujarat High Court

Case No : Civil Revision Application No. 1196 of 1966

Vijakumar K. Shah

APPELLANT

Vs

Firm of Pari Nareshchandra and Another

RESPONDENT

Date of Decision : 08-02-1967

Acts Referred:

Ahmedabad City Civil Court Rules, 1961 — Rule 142 , 143, 144, 145, 146
Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1, Order 37 Rule 2, 115, 122, 96

Citation : AIR 1968 Guj 247 : (1968) 9 GLR 238

Hon'ble Judges : Vakil, J; Bhagwati, J

Bench : Division Bench

Advocate : P.M. Raval, for the Appellant; N.C. Thakkar, for the Respondent

Judgement

Bhagwati, J.

(1) This revision application is directed against an order passed by the City Civil Court, Ahmedabad, granting leave to the first defendant to defend the suit on condition of depositing a sum of Rs. 1,000 within two weeks from the date of the order. The suit was filed by the plaintiff against defendants Nos. 1 and 2 to recover a sum of Rs. 2,000 being the amount due under a cheque dated 22nd September 1963 drawn by the second defendant in favour to the first defendant in favour of the plaintiff. The cheque was delivered by the first defendant to the plaintiff on 11th September 1963 and against the cheque the plaintiffs paid a sum of Rs. 2, 000 to the first defendant. The cheque was thereafter presented by the plaintiff for payment on 22nd September 1963 but the cheque was dishonored by the Bank by non-payment. The plaintiff, therefore, filed the present suit to recover the amount due under the dishonored cheque together with interest and costs. The suit was filed as a summary suit since it was based on a negotiable instrument and after the defendant filed his appearance, the plaintiff took out a summons for judgment for a decree for the amount claimed in the suit. The defendant resisted the summons for judgment by filing an affidavit-in-reply but the learned Judge hearing the summons for judgment, after taking

into account the plaint and the affidavits, made an order granting conditional leave to the first defendant to defend the suit on his depositing a sum of Rs. 1,000 within two weeks from the date of the order. The first defendant thereupon preferred the present revision application in this Court challenging the validity of this order.

(2) The first contention advanced by the learned advocate on behalf of the first defendant was that Rules 142 to 148-A of the Ahmedabad City Civil Court Rules, 1961, were ultra vires the rule-making power of the High Court and the learned Judge had, therefore, no power to impose any condition on the right of the first defendant to defend the suit. This contention is, however, unsustainable in view of the judgment given by us on 2nd February 1967 in Civil Revision Application No. 1089 of 1966, where we have taken the view after an elaborate discussion of the various arguments bearing upon the question that Rules 142 to 148-A are not ultra vires the rule-making power of the High Court. Having regard to that judgment, we must reject the present contention urged on behalf of the first defendant.

(3) It was then contended on behalf of the first defendant that the order granting conditional leave to defend the suit was bad inasmuch as it did not disclose the reasons on which it was based. The argument was that since the order was a judicial order made by the learned Judge in the exercise of his judicial discretion, it was necessary that it should set out the reasons so that the revisional Court could examine the validity of the reasons which prevailed with the learned Judge in exercising his discretion in the manner he did. This argument was sought of Mudholkar J. sitting as a single Judge of the Bombay High Court in *Waman Vasudeo Wagh Vs. Pratampal Dipaji and Co.*, . Now it is no doubt true that this decision of the Bombay High Court does say that an order granting or refusing leave to defend made by a Judge under the summary procedure must set out the reasons on which the order is based, but with the greatest respect to the learned Judge, we find ourselves unable to agree with the view taken by him. So far as the CPC is concerned, the summary procedure is prescribed in O. 37 of the Code, and when we turn to the rules enacted in O. 37 of the code, we do not find any provision in those rules which lay down that an order granting or refusing suit must contain the reasons for the making of the order. The order to be made by the Judge is not required to be supported by a judgment setting out the reasons which weighed with the Judge in making the order. So also we do not find anything in Rules 142 to 148-A which requires that the order must disclose the reasons in support of it or that it must be accompanied by a judgment giving the grounds in support of the order. There is also no provision in the body of the Code or in the rules in the First Schedule either as originally enacted or as amended by the High Court from time to time which requires that an order granting or refusing leave to defend a suit filed under the summary procedure must set out the reasons for the making of the order. The only question which then remains for consideration is whether there is any general principle of law which requires giving of reasons. Now it is a well-settled principle of

jurisprudence which has also been extended to the field of administrative law that where a Court or Tribunal makes an order which is appealable, the order must contain the reasons for unless the reasons are given, it would not be possible for the appellate Court or Tribunal to examine the correctness of the order appealed. If, therefore, the order granting or refusing leave to defend were appealable, it might have been possible to say that the provision of an appeal imported by necessary implication the requirement that the order must set out the reasons. But the order is not appealable under the Code or under any other provision of law. The only remedy against the order is a revision application to the High Court u/s 115 of the Code. This principle which requires that an order which is appealable must state reasons for its making is, however, not applicable where the order is not appealable but is merely subject to the revisions jurisdiction of the High Court. We asked the learned advocate on behalf of the first defendant whether he was in a position to show any authority which has taken the view that merely because a revision application is provided against an order, it must set out the reasons which included the Court or Tribunal to make it. The only authority which the learned advocate was able to cite before us was the decision of the Supreme Court in *Milkhiram (India) Private Ltd. and Others Vs. Chamanlal Bros.*, . The question which arose in that case was whether an order made by a single judge of the Bombay High Court on the Original Side granting conditional leave to the defendant to defend a summary suit was bad on the ground that no reasons were given for making it. The Supreme Court held that it was not necessary that the order should contain any reasons in support of it and while dealing with this question, Mudholkar J., speaking on behalf of the Supreme Court, made the following observations which were strongly relied on by the learned advocate of the first defendant:--

"In the case before us the order made is by the High Court itself and not by the subordinate Court. No doubt an appeal lay against it under the Letters Patent but that is merely an internal appeal in a High Court, which cannot be likened to an appeal u/s 96 or a revision application u/s 115 of the Code. Moreover, Order 49, Rule 3, sub-rule (5), provides that nothing contained in Rules 1 to 8 of Order 20 will apply to any Chartered High Court in exercise of its ordinary or extraordinary civil jurisdiction. The provision relating to the giving of reasons in support of a decision are to be found in Rule 4 of Order 20. Since these provisions, do not apply to Chartered High Courts, like the High Court at Bombay, the decision relied upon cannot be pressed in aid."

These observations, it was argued, seemed to suggest that according to the Supreme Court, if the order were made by a Judge of a subordinate Court and the order were appealable u/s 96 or subject to revision u/s 115 of the Code, the obligation to give reasons in support of the order would have been imported by necessary implication. But we cannot read these observations as laying down any such proposition. The only point which was before the Supreme Court in this case was whether a provision of an appeal from an order of a single Judge of the High Court to the Appellate Division of the High Court imported the requirement that

the order of the single Judge must contain the reasons in support of the order. In support of the argument that the order being appealable must set out the reasons which lead to the making of the order, the decision of the Bombay High Court in *Waman Vasudeo Wagh Vs. Pratampal Dipaji and Co.*, was cited and reliance was placed on the observations of the Bombay High Court to the effect that where a subordinate Court makes an order which is open to appeal or revision, it should give some reasons in support of the order. The Supreme Court distinguished this decision by pointing out that the case before them related to an order made by a single Judge of a Chartered High Court and an appeal against such order under the Letters Patent was merely an internal appeal and it could not be likened to an appeal u/s 96 or a revision application u/s 115 of the Code. It was not necessary for the Supreme Court in that case to consider the validity of the decision of the Bombay High Court or the correctness of the observations made in that decision. It was sufficient for the Supreme Court to point out that the observations in the Bombay decisions were wholly inapplicable to the case before the Supreme Court since the appeal which lay against the order in the case before the Supreme Court was an internal appeal which did not bear any comparison with an appeal u/s 96 or a revision application u/s 115 of the Code. The aforesaid observations of the Supreme Court cannot, therefore, be relied upon as constituting a decision of the Supreme Court that where a subordinate Court makes an order which is amenable to an appeal u/s 96 or revision application u/s 115 of the Code, the order must give reasons for its making nor can these observations be relied upon as in any way supporting such proposition. We do not think there is any principle of law which requires that where a subordinate Court makes an order which is not appealable but is subject to the revisional jurisdiction of the High Court u/s 115, it must give reasons in support of the order. Having regard to the severely restricted ambit to the revisional jurisdiction of the High Court u/s 115, there does not appear to be any necessity or reason for introducing such principle. We are, therefore, of the view that it is not necessary that an order granting or refusing leave to defend a suit filed under the summary procedure must contain the reasons in support of the order. The order passed by the learned Judge granting conditional leave to defend the suit could not, therefore, be held to be bad on the ground that it did not set out the reasons which prevailed with the learned Judge in making the order.

(4) The last contention urged on behalf of the first defendant related to the merits of the order passed by the learned Judge. The first defendant contended that the learned Judge had failed to take into account the affidavit-in-reply filed on behalf of the first defendant and there was, therefore, illegality or material irregularity committed by the learned Judge in the exercise of his jurisdiction within the meaning of the third clause of Section 115. The argument was that the affidavit-in-reply clearly showed that the first defendant had a bona fide defence to the suit and if the learned Judge had taken the affidavit-in-reply into account before making his order, he could not have made an order granting conditional

leave to defend to suit: the fact that a conditional order was made showed that the affidavit-in-reply could not have been taken into account by the learned Judge. Presented in this form, the argument does appear attractive but it is in our view fallacious and must be rejected. There is nothing to show that the affidavit-in-reply was not taken into account by the learned Judge. Admittedly, the affidavit-in-reply was before the learned Judge and the summons for judgment was argued before the learned Judge on the basis of the affidavits which included the affidavit-in-reply and the affidavit-in-reply must, therefore, have been considered by the learned judge. If the affidavit-in-reply was not considered by the learned Judge, it is difficult to see how the learned Judge could even grant to the first defendant leave to defend the suit. There is, therefore, no doubt that the affidavit-in-reply was taken into account by the learned Judge and since the learned Judge on a consideration of the plaint and the affidavits including the affidavit-in-reply was not satisfied that a bona fide triable issue was raised by the affidavit-in-reply and entertained a doubt as to the genuineness of the defence, he did not grant unconditional leave to defend the suit but granted leave to defend subject to the condition of depositing Rs. 1,000 as security towards the plaintiffs claim. This view taken by the learned Judge on a consideration of the plaint and the affidavits may be correct or incorrect: it may even be wholly wrong but that is not a matter into which the High Court acting in the exercise of its revisional jurisdiction can enter, the last contention urged on behalf of the first defendant must, therefore, be rejected.

(5) These were the only contentions urged in support of the revision application and since there is no substance in them, the revision application fails and the rule is discharged with costs. On the application being made by the learned advocate on behalf of the first defendant, we extend the time for making the deposit up to 20th March 1967.

(6) Petition dismissed.