

(1984) 09 BOM CK 0062

In the Bombay High Court

Case No : Civil Revision Application No. 826 of 1984

Wasudeo Sonone and Another

APPELLANT

Vs

Jagannath Ramlalji Jugele

RESPONDENT

Date of Decision : 26-09-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2, Order 20 Rule 1, Order 23 Rule 2(4)

Citation : AIR 1986 Bom 43 : (1985) MhLj 565

Hon'ble Judges : Dhabe, J

Bench : Single Bench

Advocate : A.A. Desai and S.M. Sonone, for the Appellant; P.N. Kendurkar, for the Respondent

Judgement

1. This is a revision filed by the defendants against the order of the learned trial Court dated 26th July, 1984, by which their application dated 30-6-1984 for permission to cross-examine the plaintiff and his witnesses and to adduce evidence on their behalf was rejected.

2. Briefly the facts are that the plaintiff-non-applicant filed a suit on 30-8-1983 for possession and damages against the applicants/defendants. The applicants/defendants filed their written statement on 12-1-1984. An application for amendment of the written statement filed by the defendants was allowed on 16-4-1984. The issues in the case were framed on 18-4-1984. The settling date was 20-4-1984 and, thereafter, the case was fixed for evidence on 21-4-1984. However, on the date the additional issues were framed on 19-4-1984, an application was filed on behalf of the applicants/defendants for giving the settling date or for fixing the case in the alternative for evidence after about a month. The case which was fixed for evidence on 21-4-1984, was adjourned to 24-4-1984 for evidence. The application of the defendants dated 19-4-1984 for fixing the case for evidence after a month was rejected on the same date i.e. 24-4-84 and the Court recorded the evidence of the plaintiff. According to the

plaintiff the defendants were present at the time when the evidence of the plaintiff was recorded but the plaintiff was not cross-examined because their counsel was not present. According to the defendants they had gone to call their counsel at the time the evidence of the plaintiff was recorded. After recording the evidence of the plaintiff the case was closed for judgment on 25-4-1984. However, the judgment was postponed on 30-4-1984, because in the meanwhile the defendants had applied to the District Judge for transfer of the case under S.24 of the Civil P.C. (for short C.P.C.), and the learned District Judge had granted interim stay of the passing of the judgment in the instant suit. After the application for transfer was withdrawn on 18-6-1984, by the defendants the case was fixed for judgment on 30-6-1984. On 30-6-1984 the defendants filed an application for permission to cross-examine the plaintiff and to adduce the evidence on their behalf which application was rejected by the order of the trial Court dated 26-7-1984. Being aggrieved by the aforesaid order the defendants have filed the instant revision in this Court.

3. The learned trial Court rejected the application of the defendants for permission to cross-examine the plaintiff and to adduce evidence on their behalf on the ground that the said application was not maintainable after the case was closed for judgment. A short question, therefore, which arises for consideration is whether the application dated 30-6-1984 which is admittedly filed after the case was closed for judgment is maintainable. The learned counsel for the defendants has relied upon the provisions of the O. XVIII, R.2 of the C.P.C. in support of his contention that the Court has power to permit for reasons to be recorded any party to examine any witness at any stage. Emphasis is upon the expression at any stage. It further appears that so far as the State of Maharashtra is concerned in R.2 of O. XVIII C.P.C. which is applicable in the State of Maharashtra there is an explanation after sub-rule (3) which is identical to sub-rule (4) of R.2 of O. XVIII. The explanation in R.2 applicable in the State of Maharashtra says that nothing in this Rule shall affect the jurisdiction of the Court for reasons to be recorded to direct any party to examine any witness at any stage. Even under this explanation it is contended that there is a power to the Court to allow examination of any witness at any stage. According to the defendants the expression "at any stage" would include the stage even after the case is closed for judgment till the delivery of the actual judgment. In support of his contention the learned Counsel for the defendants has relied upon a decision of the Orissa High Court in the case of Alekh Pradhan and Others Vs. Bhramar Pal and Another,

4. The learned counsel for the non-applicant-plaintiff has, however, relied upon a decision of the Supreme Court in the case of Arjun Singh Vs. Mohindra Kumar and Others, to show that "at any stage" means the stage of hearing and that after the hearing is completed and the case is posted for judgment the stage after the case is closed for the judgment is not covered under the above rule. He has also drawn the assistance from the language used in O.20, R.1, C.P.C. to show that after the case is heard the Court has to pronounce the judgment and there is no stage thereafter of any hearing after the case is closed for the

judgment. The learned lower Court has relied upon the aforesaid judgment of the Supreme Court in rejecting the application of the defendants for permission to cross-examine the plaintiff and to adduce evidence on their behalf which was admittedly filed after the case was closed for the judgment.

5. In considering the rival submissions I may first refer to the judgment of the Supreme Court (cited supra). The said case under the provisions of O. IX, R.7 C.P.C. and in particular the interpretation of the expression therein, " Where the Court has adjourned the hearing of the suit ex parte". It is in this context that the Supreme Court has considered the concept of hearing in a suit. The Supreme Court held in para 19 of its judgment that where once the hearing starts the C.P.C. contemplates only two stages in the trial of the suit. 1) Where the hearing is adjourned and 2) Where the hearing is completed. Where the hearing is completed the Supreme Court has held that the parties have no further right to or privilege in the matter and it is only for the convenience of the Court that O. XX, R.1, C.P.C. contemplates that the judgment be delivered after some interval after the hearing is completed. The Supreme Court has further held in regard to the facts of the case before it that when the stage contemplated by O. IX, R.7 has passed the next stage is only the stage of passing a decree which under O. IX, R.6 the Court is competent to pass.

6. The question, therefore, would be whether any stage after the completion of hearing is contemplated by the explanation of R.2 of O. XVIII of the C.P.C. as applicable in the state of Maharashtra. In interpreting the relevant provisions in this regard it would be relevant to notice that O. XVIII deals with the hearing of the suit and the examination of the witnesses. R.2 of O. XVIII deals with the procedure of the statement of the case and production of the evidence. Reference to sub-rule (1) of R.2 would show that on the date fixed for the hearing of the suit or any other day to which the hearing is adjourned the party having a right to begin shall state its case and produce his evidence in support of the issues which he is bound to prove. Sub-rule (2) thereof contemplates the statement of the case on behalf of the opposite party and production of his evidence. Sub-rule (3) deals with the reply to be given on behalf of the plaintiff. It is clear from the subject matter of O. XVIII and in particular R.2 that it deals with the stage of hearing of the suit. The words at any stage occurring in the explanation to R.2 of O. XVIII which is applicable to the State of Maharashtra must, therefore, be construed in the above setting of R.2 and the subject matter of O. XVIII. If so, construct, the stage which is contemplated therein is a stage of hearing of the suit and not the stage thereafter.

7. So far as the stage after completion of the hearing is concerned it is covered by O. XX of the C.P.C.R. 1 of O. XX provides that the Court after the case has been heard shall pronounce the judgment in the open Court either at once or as soon as thereafter as may be practicable at some future date. The stage of the judgment is the stage after the completion of the hearing. It is expressed that the Court should deliver the judgment immediately after the case is heard.

However, as held by the Supreme Court in the case cited supra, O. XX, R.1, however, also contemplates the judgment to be delivered after some interval after hearing is completed only for the convenience of the Court. The material observations of the Supreme Court in this regard that when the hearing is completed the parties have no further rights or privileges in the matter are important. The explanation incorporating the power to examine any witness at any stage it may pertinently be noted is provided not in O. XX, R.1 but in O. XVIII relating to the hearing of the suit. It is, therefore, clear that if any application in regard to the hearing of the suit is to be filed it must be filed before the hearing of the suit is completed and not thereafter. In this view of the matter the view taken by the learned trial Court on the basis of the decision of the Supreme Court cited supra that the instant application on 30-6-1984 by the defendants for permission to cross-examine the plaintiff and to adduce their own evidence was not maintainable is correct and has to be upheld.

8. The learned counsel for the defendants had relied upon para 4 of the judgment of the Orissa High Court cited supra to support his contention that the power under O. XVIII, R.2 can be exercised at any stage before the actual delivery of the judgment. In the first place the facts in the case before the Orissa High Court do not show that the hearing was complete in that case. It appears from para 4 itself as observed by the Court tht it was incorrect to say that on 6-9-1977 the hearing of the suit was completely closed for all intents and purposes. According to the said High Court the order of that date disclosed that the court enabled the plaintiff to submit a prior survey report if they so desired within short time fixed for the same. It was because of the filing of the surveyor's report on 12-9-1977 that an application was filed by the plaintiff for allowing a witness to be examined. The order passed by the Orissa High Court in the facts of the case before it was, therefore, correct. However, there are observations in para 4 on which reliance is placed by the learned counsel for the defendants to support his construction that at any stage means any stage previous to the actual delivery of the judgment in the case because after the delivery of the judgment the Court loses seisin over the suit. The observations relied upon by him were clearly obiter in the said case. The exact question which has arisen in this case was not before the Orissa High Court in the case before it. However, as shown above the Supreme Court in the judgment cited supra has held that if any interval is there after the completion of hearing and before the actual delivery of the judgment it is only for the convenience of the Court and that after the hearing is complete the parties have no further rights or privileges in the matter. Unfortunately the above judgment of the Supreme Court was not brought to the notice of the Orissa High Court in the aforesaid case. I do not, therefore, think that the decision of the Orissa High Court in the case cited supra, is of any assistance for decision of the issue arising in this case. There is therefore, no merit in the contention raised on behalf of the defendants in this case.

9. In the result the revision application fails and is dismissed. However, in the

circumstances of the case there would be no order as to costs. Application dismissed.