Arya Insurance Co. Ltd. Vs Lala Channoolal

Court: Allahabad High Court

Date of Decision: Oct. 26, 1956

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 11 Rule 21, Order 43 Rule 1, Order 47 Rule 7, 115

Citation: AIR 1957 All 400

Hon'ble Judges: Roy, J

Bench: Single Bench

Advocate: M.N. Shukla, for the Appellant; B.R. Avasthi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Roy, J.
These two civil revisions by the defendant arise out of two different orders passed in the same suit. The suit was instituted by

Chhannoo Lal, the plaintiff-opposite-party, for recovery of certain sum as salary. Under the provisions of Order XI of the CPC the defendant, on

an application by the plaintiff dated the 22nd of August, 1953, was called upon to answer certain interrogatories and to make discovery of certain

papers. Twelve days time was initially granted to comply with the order. On the 5th of September, 1953, time was extended by twenty days on

defendant''s application, which was again extended on 23rd September, 1953, by three weeks. The defendant still failed to comply with the order,

with the result that the court suo motu granted further time and it finally passed an order on plaintiff''s application No. 63-C dated 31st October,

1953, to the following ef feet:

Defendant has not filed either answer or objection. The defence of the defendant is struck o(f. Suit be heard ex paite on the date fixed"".

This order was passed without notice to the defendant on 31st October, 1953, under the provisions of Order XI Rule 21 of the Civil Procedure

Code. That rule says that where any party fails to comply with any Order to answer interrogatories, or for discovery or inspection of document, he

shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant to have his defence if any, struck out and to be

placed in the same position as if he had not defended, and the party interrogating or seeking discovery, or inspection may apply to the court for an

order to that effect, and an order may be made accordingly. The rule nowhere requires that notice of the application is to be given to the opposite

side.

2. On. 14-11-1953 the defendant made an application in review before the trial court praying for the setting aside of the order of the 31st of

October, 1953, and an affidavit was filed to the effect thai on 28th September, 1953, a functionary of the defendant company had left for Bombay

on an urgent work and that was the reason why the order had not been complied with. The Munsif dismissed the application in review on 19th

December, 1953, holding that the application and the affidavit did not disclose what kind of urgency made the defendant company forget that the

reply to the interrogatories had to be Sled within three weeks of 23rd of September, 1953. more especially in a case where the time was extended

suo motu by the court and yet the defendant did not choose to find out what was happening in the case.

3. On the 23rd of December, 1953, the defendant filed an appeal against the order dated 31st October, 1953, under the provisions of Order

XLIII, Rule 1(f) of the Code of Civil Procedure; and along with the memorandum of appeal he filed an application before the appellate judge u/s

14 of the Limitation Act praying that the delay in filing the appeal may be condoned. On that application the following order was passed:--

The order appealed against was passed on 31st October, 1953, but its copy was applied for on 21st of December, 1953, long after the period of

appeal, Appellant was duly represented by counsel so that it makes no difference whether appellant belongs to Banaras or Kanpur. Hence the

delay cannot be condoned. Appeal rejected as time barred.

This order was passed on the 13th of February, 1954 Civil Revision No. 350 of 1954 is directed against the order of the District Judge passed on

13th February, 1954, and Civil Revision No. 351 of 1954 is directed against the order of the Munsif passed on 19th December, 1953.

4. After hearing learned counsel for the applicant I am of opinion that no case has been made out to revise the orders in question. The defendant

was obviously a contumacious party and in spite of enough time having been granted, he did not comply with the order of answering interrogatories

and of making discovery of document. Order XI, Rule 21 empowers a court to strike out the written statement of a defendant and to place the

defendant in the same position as if he had not defended the suit, if the defendant fails to comply with an order to answer interrogatories or for

discovery or inspection of document; and such a step can be taken by the Court when the party interrogating or seeking discovery or inspection

applies to the court for an order to that effect.

Occasions may arise where an order of that nature may be passed by a court after issuing notice to the party. But notice is not in every case

necessary; and Order XI, Rule 21 does not specifically provide for notice. The order that was passed by the Munsif on the 31st of October,

1953, striking out the defence was passed after several opportunities had been given to the defendant to answer the interrogatories and to make

discovery of the documents. It has been urged on behalf of the applicant that the matter necessitated the looking up of a number of records at the

head office of the defendant and that that was the reason why the delay was caused.

It has been further urged that the Secretary of the defendant company had gone away at Bombay on an important business of the company and

that that was additional reason why default had been made. It does not, however, stand to reason that in the case of a limited insurance company

the insurance company was not in a position to inform the court when the order dated 23rd of September, 1953. expired that certain additional

factors intervened which necessitated the extension of further time. The court did not proceed to dispose of the matter in a hurry. The court, as I

have already observed, suo motu granted further time when finally the order on the 31st of October, 1953, was passed.

The appeal was obviously filed beyond time and the reason which was set out by the defendant-appellant for the condonation of delay u/s 14 of

the Limitation Act did not commend itself to the judge when the judge rejected the appeal as time barred. It has been contended by the applicant

that the judge did not consider the question as to whether the time that was taken by the appellant in prosecuting the application for review should

have been excluded or not. The judge in his order did not of course mention that point specifically, but that alone will not justify the applicant to

have the order passed by the judge revised. The judge was of the opinion that the delay cannot be condoned u/s 14 of the Limitation Act, and that

sets the appeal at rest.

5. So far as the review is concerned, the Code, does not provide for an appeal against refusal of a] review. It provides for an appeal under Order

XLIII, Rule 1 (w) from an order granting a review; and an order is appealable in such a case on the ground specified in Order XLVII, Rule 7 (1)

of the Code. An order passed in review rejecting the review may, how-ever, be brought into question in revision; but the scope of revision lies

within a very narrow compass, for in such a case the applicant has got to justify Ins contention that in the exercise of its jurisdiction the court of first

instance in refusing review, acted illegally or with material irregularity.

No such illegality or material irregularity has been found. If the court in rejecting the review was of the view that the ground set out by the applicant

was not proper and not acceptable, it would not be open to a revisional court to come to a contrary conclusion on that point. Under the

circumstances I am of opinion that there is no force in these two revisional petitions and they are dismissed with costs.