(1947) 10 AHC CK 0008

Allahabad High Court

Case No: None

Swadeshi Bima Co. Ltd.	APPELLANT
Vs	
B. Shiv Charan Das	RESPONDENT

Date of Decision: Oct. 17, 1947

Citation: AIR 1948 All 315 : (1948) 18 AWR 48

Hon'ble Judges: Sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sinha, J.
This is an application in revision against an order of the learned Civil Judge of Agra passed on 19th January 1946, restoring a suit which had, in the past, been dismissed for default several times.

2. The facts of this case, which hardly reflect any credit upon the plaintiff, are briefly these:

3. On 19th September 1916, Dr. Asthana granted a mortgage for Rs. 15,000 in favour of one Murli Dhar. The period of payment was five years. In 1940 the mortgagor sold his interest to the Swadeshi Bima Company Ltd. On 21st October 1942, a suit for recovery of Rs. 41,325 was brought on the basis of the mortgage. Rupees 15,000 represented the'' principal and the balance was alleged to have been due on account of interest. The suit was, prima facie, barred by limitation, but the plaintiff relied upon certain payments and upon certain acknowledgments.

4. The Munsarim reported a deficiency of Rs. 1,602-8-0. Time was taken on several occasions for making good the deficiency, but it was never made good. On 12th February 1943, the plaint was rejected. An application to restore the suit, in the exercise of its inherent jurisdiction, was rejected by the Court. The next day, i.e., on 13th February an application was presented on behalf of the plaintiff, for restoration of the case, on the allegation that he was present with the required court-fee. The

suit was accordingly restored on 4th August 1943. On 18th November 1943, the Swadeshi Bima Company filed a written statement and raised various defences. It pleaded, in the first instance, that the entire mortgage amount had been discharged. In the alternative, there was a plea of limitation. In order to make its position sure, it served interrogatories on the plaintiff, calling upon him to furnish the particulars of payments and the dates on which they "had been made. It further demanded the details of the cheques by means of which the payments were alleged to have been made, and also the other relevant papers in support of the plaintiff''s claim that the suit was not barred by limitation.

5. On 24th January 1944, the mortgagor filed his written statement. His case was that he had paid Rs. 21,825 by the year 1926. He further complained that credit had not been given to him for a sum of Rs. 8,000, which had been paid-by means of a cheque. He said that either the whole of the mortgage amount had been discharged or, in case there was any balance left, it was a trifling sum, which he was prepared to pay.

6. The Court ordered the service of inter, rogatories and directed the plaintiff to comply with its order.

7. On 25th February 1944, an application was made by the Swadeshi Bima Company praying for the dismissal of the suit on the ground that the order of the Court had not been complied with. The plaintiff was not present; his counsel was. He made an application for an extension of time. It was granted, but the order was not obeyed. On 22nd March 1944, the suit was dismissed. On 25th May 1944, it was again restored. The plaintiff had, even up to this date, not complied with the order and not furnished, replies to the interrogatories. He again took time. On 26th March 1945, a further extension of time, fifteen days, was allowed. The order still remained uncomplied with, with the result that the suit was dismissed on 23rd May 1945.

8. On 2nd June 1945, the application, which has given rise to this application in revision, was made on behalf of the plaintiff for restoration of the suit on the ground that he was ill on 23rd of May. In support of it, he produced a few certificates of a few doctors of Allahabad and Agra.

9. The mortgagor, as also the Bima Company; as well as the other defendants, refuted the allegation of illness. They said that the plaintiff was not ill, he was in a position to attend the Court and the present application was only another instance of his dilatory tactics.

10. The learned Civil Judge granted the plaintiff''s application for restoration by the-following summary order:

This is an application for setting aside the ex parte order of dismissal. There are 33 defendants. This suit is valued at Rs. 40,000. The application is supported; by an affidavit. I set aside the order on payment of Rs. 150 as costs. If the cost is not paid

within 14 days the application shall stand automatically dismissed with costs.

11. Mr. Gopi Nath Kunzru, the learned Counsel for the applicant, contends that the facts of this case did not attract the application of Order 9 and the only remedy available to the plaintiff, was to come in appeal against the order of the learned Civil Judge passed on 23rd May 1945. His argument is that several adjournments had been granted to the plaintiff. Apart from the fact that the order of the Court had not been complied with, the learned Civil Judge looked into the plaint and held that it did not disclose a subsisting cause of action. The order, he argues, amounts to an order dismissing the suit on merits.

12. It is not necessary for us to express any opinion, as we feel that the order of 19th January 1946, was passed without any sufficient cause within the meaning of Order 9, Rule 9, Civil P.C.

13. The position stands thus: Numerous adjournments had been granted to the plaintiff to furnish replies to the interrogatories and the necessary papers in support of his plea that the suit was not barred by limitation. The learned Counsel for the applicant informs us that that order remains uncomplied with up to this day. Be that as it may, it had not been complied with by 19th January 1946, when the learned Civil Judge passed the order restoring the suit. The previous order dismissing the suit, dated 23rd May 1945, was passed on two grounds, the plaint did not disclose a subsisting cause of action and the orders of the Court had remained undbeyed. The situation on 19th January 1946, had not altered at all. It was precisely the same. The learned Civil Judge has not applied his mind to the facts of the case. This Court has held in Ram Sarup Vs. Gaya Prasad , that the jurisdiction of the Court to restore a suit or to set aside an ex parte decree, comes into being only if the party in default Btrictly comes within the meaning of Rule 9 or Rule 13 of Order 9. Unless sufficient cause has been made out, the Court has no jurisdiction to restore a case.

14. It is contended by the learned Counsel for the opposite party that Order 9 is not exhaustive of the jurisdiction or the power of the Court to restore suits or set aside ex parte decrees. It is true; but the necessary foundation for the exercise of a power inherent in a Court, outside Order 9, must be properly laid. The Court must apply its mind. But the exercise of the mind presupposes some materials to which it can be applied. If there are some, and the Court has considered them, it might possibly be argued that this Court cannot, in revision, interfere with the discretion of the Court on the ground that the quantum of evidence or materials was not enough. But here, there were no materials; there was not even a semblance of justification for the plaintiff''s conduct. It clearly amounted to an abuse of the process of the Court. To extend the doctrine of ''inherent jurisdiction'' to circumstances such as they exist in the present case, will be conducive neither to justice nor to the dignity of the Court.

15. We are of opinion that the order of 19th January 1946, was wholly without jurisdiction. We, therefore, allow this application, set aside the order of the learned

Civil Judge and dismiss the application for restoration. The result of our order is that the order of the learned Civil Judge, dated 23rd May 1946, stands. The applicant will be entitled to his costs in both Courts.