
(1993) 07 AHC CK 0025

Allahabad High Court

Case No: C.R.Nos. 20 and 68 to 70 of 1990

M/s. Gur Prasad
Shyam Babu and
others

APPELLANT

Vs

State Bank of India and
another

RESPONDENT

Date of Decision: July 5, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 11, Order 11 Rule 14, Order 11 Rule 21, Order 21 Rule 11, Order 9 Rule 13

Citation: AIR 1994 All 151 : (1993) AWC 1576

Hon'ble Judges: V.K. Khanna, J

Bench: Single Bench

Advocate: Rakesh Kumar Porwal, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Civil Revision No, 20 of 1990 connected with Civil Revisions Nos. 68, 69 and 70 of 1990 have been filed against the order of the Civil Judge, Etawah in four connected suits on four applications moved by the plaintiff-opposite party State Bank of India for setting aside the four orders dated 21-8-1987 passed under Order 11, Rule 11, C.P.C. As all the four revisions raise similar facts and questions of law the same are being disposed of by a common order.

2. Brief facts for the purposes of deciding the aforesaid revisions are that the plaintiff-respondent No. 1, State Bank of India, filed four suits in the year 1986 against the defendants for recovery of money which had been advanced to the defendants on the basis of agreements which had been executed between the parties. Applications were

moved in the suit by the defendants numbered as 31-C on the ground that the plaintiff has filed suit for recovery of money against the defendants and in the plaint has mentioned about the agreement and the mortgage which are the basis of the suit and those documents have not been filed. It was mentioned that without seeing those papers it was not possible for the defendants to file written statement. According to the defendants the plaintiff has not given the copies of the documents and it is necessary that those documents be got filed in the court. In the prayer it was mentioned that the following documents be summoned from the plaintiff:--

- (i) Form "C" Agreement dated 24-2-1983;
- (ii) Balance sheet of cash credit limit;
- (iii) Guarantee deed dated 24-12-1983;
- (iv) D. P. Note and Delivery letter dated 24-12-1983;
- (v) Title deed dated 8-5-1985;
- (vi) Letter Dated 10-5-1985;
- (vii) Account Books; and
- (viii) Balance Sheet and Public Auction.

3. The aforesaid application was moved on 16-7-1987. On the aforesaid application it was written that a copy has been received and the prayer made in the application is opposed and prayer was made that the time be given to file objections as today is the date fixed for issues. On 16-7-1987 itself the Court passed the order that as the agreement deed etc. had not been filed and directed the plaintiff to file agreement deed etc. The application of the defendants for giving copies was rejected and it was ordered that the plaintiff can inspect the documents. The plaintiff was directed to file the documents by 30-7-1987. The defendant was asked to file a written statement by 14-8-1987 and the case was ordered to be listed on 21-8-1987 for framing of issues. On 30-7-1987 the Court noted that the plaintiff has not filed any papers and the case be listed on the date fixed. On 14-8-1987 an application was moved by the defendants for dismissing the suit due to non-compliance of Court's order dated 16-7-1987. The Court ordered that the defendant himself has not complied with the orders of the Court and did not file written statement. Put up on the date fixed.

4. On the date fixed i.e. 21-8-1987 the case was called out. The Court observed in the order that it was 12-20 p.m. and none was present on behalf of the plaintiff. 33-C the application moved by the defendant was heard. On the application the Court passed the following order:--

"The plaintiff has not filed the agreement deed despite specific order dated 16-7-1987 in this regard. The said deed is the basis of the suit and it ought to have been filed along with the plaint. The order dated 16-7-1987 makes a clear indication that this document was necessary in order to enable the defendant to file his W. S. but the plaintiff ignored the directions of the Court and failed to file it by due date i.e. 30-7-1987 and even when the defendants moved present application 33-C copy of which has already been given the plaintiff did not take care to file the said document. It appears from the conduct of the plaintiff that it does not want to file the said basis of suit and also intend to flout the order of the Court in order to delay the proceedings with some mala fide contention. As such, the application 33-Ga is allowed for the prayer of dismissing the suit. The defendants are entitled to special costs. The suit is dismissed in default of plaintiff for non-compliance of Court's order with a special costs of Rs. 500/- in favour of the defendants 1 to 4."

5. On 21-8-1987 application was moved under Order 9, Rule 13 and S. 151, C.P.C by the plaintiff on the ground that the Reader of the Court was informed that the requisite application along with the document was being typed out and as the counsel for the plaintiff got busy in another Court the case was dismissed in default. It was also mentioned that the plaintiff had no intention to flout the orders of the Court and was, in fact getting the necessary documents prepared for being filed in the Court. On the aforesaid ground it was prayed that the order dismissing the case on 21-8-1987 be recalled and the suit be restored to its original number.

6. The Civil Judge, under the impugned order has allowed the aforesaid application moved by the plaintiff for setting aside the order dismissing the suit on the ground that the suit could not be dismissed under Order 21, Rule 11, C.P.C. for non-production of documents. The application moved by the defendant 33-Ga and the order dated 21-8-1987 was set aside and the suit was restored to its original number. It is this order which has been challenged in these four revisions.

The learned counsel for the applicant has urged that the application under O.9, R. 9, C.P.C. was not maintainable as the suit was not dismissed in default but in consequence of an order passed earlier by the trial Court. It was also urged that the suit was rightly dismissed under O.11, R. 21, C.P.C.

7. The main question which falls for determination in the present case is as to whether the order which had been passed by the trial Court on 21-8-1987 could be passed under O. 11, R.21, C.P.C. Order 11, R.21, C.P.C. runs as follows:--

"21. Non-Compliance With Order For Discovery:

(1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, 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 on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action".

From the provisions of the aforesaid R. 21 it is thus clear that the Court can exercise the power under the aforesaid rule in three circumstances i.e. when a party fails to comply (a) with any order to answer interrogatories; (b) with any order for discovery of documents; and (c) with any order for inspection of documents.

The learned counsel for the applicant has frankly conceded that the order which had been passed by the trial Court on 16-7-1987 did not fall in either of the three categories and was an order of production of documents. I have also carefully examined the order which has been passed by the trial Court and I am of the opinion that the aforesaid order is only an order for the production of documents. Such an order could be passed by the Court below only under the provisions of Order 9, Rule 14, C.P.C. A bare perusal of Order 9, Rule 21 would show that the suit could not be dismissed for non-compliance of the directions of Order 9, Rule 14, C.P.C. and at best the Court could draw an adverse inference because of non-production of the documents by the plaintiff. A Division Bench of this Court in the case of Lyalpur S. M. Company v. Ram (AIR 1922 All 235) has also held that provisions of Order 11, Rule 21 are not applicable to cases of non-compliance with Order for production of documents under Order 11, Rule 14, C.P.C. As the plaintiff was not present at the time when the suit was called out, under the provisions of CPC the dismissal of the suit will be treated to be a dismissal under Order 9, Rule 8, C.P.C. and thus in my opinion an application under Order 9, Rule 9, C.P.C. was maintainable for setting aside the order of dismissal passed by the trial Court.

8. For the reasons stated above I am of the opinion that the order passed by the Court below does not suffer either from any error of jurisdiction or material irregularity in the exercise of jurisdiction requiring interference by this Court u/s 115, C.P.C. The revisions are accordingly dismissed. However, looking to the facts and circumstances of the case the parties shall bear their own costs.

9. Petitions dismissed.