Chandra Bhan Srivastava Vs Smt. Prema Srivastava

Court: Allahabad High Court

Date of Decision: Sept. 19, 1995

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 15 Rule 5, 20(4), 24
General (Civil) Rules, 1957 â€" Rule 89A, 89A(1), 89A(2), 89A(3), 89A(4)
Provincial Small Cause Courts Act, 1887 â€" Section 25

Hon'ble Judges: N.L. Ganguly, J

Bench: Single Bench

Advocate: P.N. Khare, for the Appellant;

Final Decision: Allowed

Judgement

N.L. Ganguly, J.
This civil revision u/s 25 of the Provincial Small Causes Court Act has been filed against the ex parte judgment and

decree dated 29.1.1985 passed by VIII Additional District Judge, Kanpur decreeing the suit for eviction and recovery of arrears of rent. The

parties are represented and have exchanged affidavits. The parties consented that original records of the court below shall not be necessary. I

proceed to decide the revision finally.

2. The learned Counsel for the applicant submits that the suit was filed before the court. Order sheet shows that notice was served, as per order

sheet dated 11.1.1985, on the Defendant applicant but no written statement was filed on behalf of Defendant. Thereafter it was directed that the

S.C.C. Suit itself be transferred to court of VIII Additional District Judge fixing 24.1.1985, Record shows that the record of the suit was received

by transfer on 15.1.1985. It was directed by the VIII Additional District Judge to put up the case on the date fixed. On the date fixed, 24.1.1985

when the case was called in the court of VIII Additional District Judge, the Defendant was not present. It is noted in the order sheet that he was

personally served and no written statement has been filed. Order for proceeding ex parte was passed fixing 25.1.1985. On the said date,

statement Plaintiffs witnesses was recorded and date of Judgment was fixed for 29.1.1985 and the impugned Judgment was passed on the said

date.

3. It is not disputed that when the S.C.C. suit was transferred from the original court to the court of VIII Additional District Judge, no fresh notice

about the transfer was given to the Defendant. Provisions of Rule 89A of the General Rules (Civil) shows that it is mandatory for the court to give

notice and information of the transfer. The provisions of General Rules (Civil), Rule 89A is quoted as under:

Procedure to be followed on transfer or withdrawal of cases

(1) when a case, i.e., a suit, appeal or other proceedings in which a date for attendance of a parry or the parties in a particular court has been

fixed, is transferred from that court to another, the former court shall record the order of transfer in the order sheet and get It signed by counsel of

the party or parties, if any party is unrepresented information shall be sent to his registered address. The case shall be called out by the other court

on the date already fixed by the transferring court and the presence of the parties noted.

(2) A note to the effect that a party or the parties have been Informed in accordance with Sub-rule (1) shall be made on the record by the

transferring court.

(3) Where cases are transferred in a large number the court from which they are transferred shall, besides following the procedure laid down in

Sub-rule (1) draw up a list mentioning In it the numbers and years of the cases and the names of the parties and their counsel, and shall cause one

copy of it to be posted on the notice board of the local bar association for Information of the members of the bar and another copy to be posted

on the notice-board of the court for information of the general public. It shall be also sent to the other court along with the records of the

transferred cases, a copy of the list (or relevant extract of it) the other court shall post it on Its own notice-board. If the other court Is situated in a

different place In which there is another bar association, an extra copy of the list shall be sent to it for being posted on the notice board of the bar

association.

(4) The court to which cases are transferred shall not proceed without satisfying itself that the parties or their counsel, as the case may be, have

been informed of the transfer.

(5) In Sub-rules (1) to (4) "transfer" includes withdrawal of a case.

The record does not show that in any manner there was any compliance of the aforementioned rules. Similar provisions are also contained in

Section 24 of the Code of Civil Procedure. This is common knowledge and principle of natural justice also that before passing an order against any

person, notice is to be given to the person concerned against whom the orders are likely to be passed. In view of the above observations, there is

no option but to allow the revision. The Judgment and decree of the court below is liable to be set aside and the suit is directed to be restored to its

original number. The VIIIth Additional District Judge, Kanpur Nagar before whom the case was pending. If is still available, shall proceed with the

matter expeditiously after notice to both the parties. In case the said court is not available, the record be placed before the District Judge who may

nominate some other competent court for finally deciding the S.C.C suit if possible within a period of six months.

4. In this case an interim order staying the eviction was passed with certain conditions. There has been some controversy raised by the landlord

Respondent that entire amount as required has not been deposited, Instead of deciding this question earlier this Court was pleased to direct that

the revision itself be decided finally as such I am also not entering into the said question, however, I direct that the court below shall consider this

aspect whether the tenant Is a defaulter within the meaning of Section 20(4) and shall adjudicate this question. Any amount already deposited shall

be taken into account. The court below shall also take into consideration the provisions of Order XV, Rule 5 Code of Criminal Procedure and

pass appropriate orders according to the proviso also, if necessary.

5. The revision is allowed with the aforementioned observations. Parties to bear cost.