
Girdhari Lal Agarwal Vs Banaras State Bank Ltd. and others

Civil Revision No. 81 of 1992

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Jan. 10, 1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 115

Hon'ble Judges: S. Saghir Ahmad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Saghir Ahmad, J.

This revision is directed against the order dated 22-10-1991 by which the application 109 Ga-2 filed by the applicant in

the trial court " for dismissing the suit under Order XI, Rule 21, Code of Civil Procedure, has been dismissed.

2. It appears that opposite party No,1, the Banaras State Bank Ltd, (hereinafter referred to as "the Bank") had filed Regular Suit No. 45 of 1985

in the Court of Civil Judge, Faizabad for recovery of a sum of Rs. 1,98,555.65 against four defendants which also included the present applicant

arrayed as defendant No. 3. It further appears that defendant Nos.1 and 2, who were the principal borrowers, have not filed the written statement

and the suit had been directed to proceed ex parte against them by order, dated 6-7-1988. defendant No.4 has filed a written statement but has

not been appearing before the court and the suit is being contested by defendant No.3 alone.

3. It may be mentioned that defendant Nos. 3 and 4 are sureties for defendant Nos. 1 and 2.

4. During the course of the proceedings in the suit, defendant No. 3 made an application (87-Ga) with the prayer that the plaintiff Bank be directed

to file the documents of which the list given at the foot of the application.

5. This application was opposed by the plaintiff Bank who filed objection (90-Ga) in which some of the documents were said to be of a

confidential nature. The trial court, however, by its order, dated 16-12-1989 allowed the application (87-Ga) and directed the plaintiff Bank to

produce all the documents in the Court of which a list was given in the application. The documents were required to be produced on

5-1-1990. The matter was adjourned for one reason or the other and ultimately on 9-3-1990 the plaintiff Bank filed a few documents as per list

(98-Ga) and for the rest of the documents it prayed for time which was allowed.

6. On 21-3-1990 the plaintiff Bank filed three more documents per list (104-Ga) but two of the documents mentioned in the original application

(87-Ga) were not filed and consequently the present applicant, in his capacity as defendant No. 3, moved an application (109-Ga) for dismissing

the suit for non-compliance of the Court's order, dated 16-12-1989

7. This application was opposed by the plaintiff Bank which filed objections (111-Ga) pleading, inter alia, that the documents mentioned at Serial

Nos. 1 to 2 of the list given by defendant No.3 in his application (87-Ga) were not available in the plaintiff Bank and, therefore, it was not

possible for it to produce those documents. These objections were supported by an affidavit (112-Ga) of Sri Nand Kishore Jain, Manager of the

Bank.

8. The trial court by the impugned order, dated 22-10-1991 has rejected the application (109-Ga), and therefore, the defendant No.3, as

indicated above, has approached this Court u/s 115 of the CPC for setting aside the said order.

9. I have heard the counsel for the applicant who insisted that the trial court ought to have dismissed the suit under Order XI, Rule 21 as the

plaintiff Bank had not produced all the documents before the Court in compliance of its order, dated 16-12-1989.

10. Order XI, Rule 21 of the CPC provides as order:

Order XI, Rule 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 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.

11. A perusal of the provision, quoted above, would indicate that order under Order XI, Rule 21 can be passed only if:

(i) A party fails to comply with an order to answer interrogatories;

(ii) A party fails to comply with an order for discovery; or

(iii) A party fails to comply with an order for inspection of documents.

12. If the non-compliance is by the plaintiff then the suit would be dismissed for want of prosecution. If the non-compliance is by the defendant, his

defence could be struck off and he would be placed in the same position as if had not defended the suit. Where a suit is dismissed under this Rule

the plaintiff is precluded from bringing the suit on the same cause of action.

13. The provisions contained in Order XI, Rule 21 are penal in their nature and, therefore, these provisions have to be construed strictly. These

provision can be applied only when the facts admit of on doubt as to the conduct of the party whose default is shown to be obstinate,

contumacious and wilful and, therefore, inexcusable.

14. Since the provisions are penal in character and, as observed earlier, the provisions have to be strictly construed, one has naturally to look back

to the other provisions of the Court which speak of an order for answering interrogatories or for discovery or an order for inspection of

documents.

15. Order XI, Rules 1 to 11 contain the provisions for interrogatories. Order XI, Rule 12, contemplates an application for discovery of documents

Order XI, Rule 15 relates to inspection of documents referred to in pleadings or affidavits. Similarly Rules 16, 17, 18 and 19 deal with the

inspection of documents. Rule 20 deals with the inspection of documents.

16. Order XI, Rule 14 provides as under;

Order XI, Rule 14:- Production of documents.- It shall be lawful for the Court at any time during the pendency of any suit, to order production by

any party thereto, upto oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall

think right, and the Court may deal with such documents, when produced, in such manner as shall appear just.

17. The above provisions clearly indicate that an application for production of documents is not the same thing as an application for inspection or,

for discovery of documents.

18. The provisions of Rule 14 of Order IX have already been quoted above. It was under this provision that the applicant in the instant case gave

an application for production of documents. He has already filed the copy of the application as Annexure "A" to the affidavit in support of the stay

application, which itself indicates that the application is headed as an application under Order XI, Rule 14 and Section 151 CPC. In this

application a prayer has been made that the plaintiff Bank may be directed to file the documents which were specified in the list set out immediately

below the prayer made in the application.

19. The Court has no power to dismiss a suit for disobedience of an order under Order XI, Rule 14 for the production of documents. Where a

party refused to produce certain documents it cannot be penalised under Order XI, Rule 21 as the refusal to produce the documents cannot be

treated to be a lapse within the meaning of Rule 21 of Order XI.

20. When a party refused to produce certain documents required to be produced by it, the Court trying the suit would be entitled and justified in

the circumstances of the case to raise an adverse presumption against the party on account of such non-production.

21. Since in the instant case it was an order for production of documents in Court on an application made by the revisionist under Order XI, Rule

14 CPC the trial Court was fully justified in not dismissing the suit under Order XI, Rule 21 CPC.

22. The revision in my opinion, has no merit and is dismissed in limine