

(1974) 02 BOM CK 0018

Bombay High Court

Case No: F.A. No. 281 of 1969

Bombay Enamel Works

APPELLANT

Vs

Purushottam S. Somaiya

RESPONDENT

Date of Decision: Feb. 25, 1974**Acts Referred:**

- Bombay City Civil Court Act, 1948 - Section 9

Citation: (1974) MhLj 947**Hon'ble Judges:** R.K. Joshi, J; P.M. Mukhi, J**Bench:** Division Bench**Advocate:** L.G. Khare, for the Appellant; M.G. Kikla, for the Respondent

Judgement

P.M. Mukhi, J.

[His Lordship, after dealing with facts and circumstances of the case in relation to the passing of conditional order granting leave to defend and dismissal of chamber summons, proceeded.] This brings us to the contention of Mr. Khare that the learned trial Judge who made the conditional order granting leave to defend on deposit of Rs. 7,500 should have given reasons for having made a conditional order. We may point out that this point was never taken at any stage of these proceedings. In the appeal before us the appeal memo does not even indirectly refer to this point. There is a general ground that the decree passed against the appellants is clearly bad in law and is not based on the principle of justice and equity. But even this point would not encompass the point now sought to be taken by Mr. Khare.

2. It is really not necessary therefore for us to consider this point but we may deal with it in so far as it is an important point of law.

3. Mr. Khare referred to a judgment of this Court in [Waman Vasudeo Wagh Vs. Pratampal Dipaji and Co.](#), where a single Judge of this High Court (Mudholkar J. as he then was) held that it was undoubtedly within the discretion of the Court below to decide whether the defendants should be given unconditional leave to defend or

whether the leave should be made conditional upon depositing a certain amount of money in the Court.

4. The learned Judge then observed (p. 593):

...but the order of the Court is open to revision by this Court. In order to enable this Court to consider whether the Court below had applied its mind to the various matters raised before it while making an order of this kind, it is essential that the order, on the face of it, must show that the Court had done so. This is only possible if the Court gives its reasons for passing the particular order.

The learned Judge then went on to state that while it was true that the Court below had been given discretion to grant or not to grant leave to defend a summary suit the superior Court would not lightly interfere with the exercise of such discretion. However, in order to enable the superior Court to discharge its duty it must know the reasons which led the Court below to exercise its discretion in a particular manner.

5. It is now necessary to refer to another judgment of this High Court in [Amrit Banaspati Co. Ltd. Vs. J.C. Engineer and Co.](#), where another single Judge of this Court (Patel J.) dealt with the same question i.e. whether the Bombay City Civil Court was bound to give reasons in support of the discretion exercised by it on the question whether unconditional or conditional leave to defend be given. The learned single Judge referred to section 9 of the Bombay City Civil Court Act, 1948, which reads as follows:

Save as otherwise provided in this Act all questions which arise in suits or other proceedings under this Act in the City Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

The learned Judge pointed out that on the Original Side of this Court in non-appealable matter a Judge does not give reasons and the appellate Court does not require him to do so and that following this practice if a Judge of the City Civil Court does not give reasons in non-appealable orders it cannot be said that such an order is illegal. The Court also pointed out that in *Woman Vasudeo v. Pratapmal* the attention of the learned Judge in that case had not been invited to section 9 of the Bombay City Civil Court Act of 1948 and that it was difficult to read the judgment in *Woman Vasudeo v. Pratapmal* to mean that the City Civil Court Judge must, in every case, give reasons. Reference was then made to the fact that the learned Judge (Mudholkar J.) in *Woman Vasudeo v. Pratapmal* had only said that "where a Court deals with a matter of this kind it is desirable that it should set out in its order the substance of the defence made by the defendant and then give its reasons for its conclusion that the defence discloses a friable issue or that it does not disclose one."

6. The High Court therefore in Amrit Banaspati's case held that a Judge of the City Civil Court was not required to give reason in such matters but that it was desirable that in complicated cases the Judge should give an indication of what he thinks about the defences sought to be set up, and that this may be done by giving a reference to the paragraphs in the affidavits and the Judge's conclusion briefly. It was also held that each case must depend on its own facts and the High Court would interfere in revision if it was satisfied that the learned Judge of the City Civil Court had not really appreciated the points of issue or that his order was arbitrary or capricious, and there was consequential failure of justice.

7. It was then suggested by Mr. Khare that there are certain observations in the judgment of the Supreme Court in [Milkhiram \(India\) Private Ltd. and Others Vs. Chamanlal Bros.](#), that so far as the City Civil Court is concerned reasons must be given, when deciding the question of leave to defend.

8. Now in this Supreme Court case a reference was made to Waman Vasudeo v. Pratapmal (supra) and the decision of the Bombay High Court in that case was distinguished on the ground that the decision of the Bombay High Court was given while dealing with an order made by the City Civil Court, whereas the order before the Supreme Court was an order passed by the High Court of Bombay on its Original Side.

9. We are unable to see how this decision of the Supreme Court lays down the rule that the City Civil Court must in all cases give reasons in support of the discretion exercised by it. On the contrary the Supreme Court made the following significant observation "while laying down the normal rule it does not appear to have been intended to make it inflexible." (Emphasis supplied).

10. It is to be noticed that by reason of the provisions of section 9 of the Bombay City Civil Court Act of 1948 the City Civil Court follows the procedure adopted by this Court in the exercise of its Ordinary Original Civil Jurisdiction. It is a procedure and practice which appears to have worked well and we do not find any reasons for departing from it.

11. It is useful to refer to two judgments of the Gujarat High Court where similar questions were considered. In [Vijakumar K. Shah Vs. Firm of Pari Nareshchandra and Another](#), reference was made to certain observations in Milkhiram's case (supra) and it was argued that these observations seemed to suggest that if an order were made by a Judge of the subordinate Court and the order was appealable or subject to revision the obligation to give reasons in support of the order would be imported by necessary implication. Bhagwati J. (as he then was) held that the observations of the Supreme Court in Milkhiram's case could not be read as laying down any such proposition. Bhagwati J. noted that the decision of the Bombay High Court in Waman Vasudeo v. Pratapmal (supra) had been cited, but the Supreme Court distinguished that decision by pointing out that the matter before the

Supreme Court related to an order made by a single Judge of the Bombay High Court and that in any event it was not necessary for the Supreme Court to consider the validity of the decision in *Waman Vasudeo v. Pratapmal* or the correctness of the observations made in that decision.

12. After holding that the observations of the Supreme Court in *Milkhiram's* case could not be relied upon as constituting a decision of the Supreme Court that where a subordinate Court makes an order, which is amenable to appeal or revision, the order must give reasons, the Gujarat High Court then went on to observe as follows (p. 249):

...We do not think there is any principle of law which requires that where a subordinate Court makes an order which is not appealable but is subject to the revisional jurisdiction of the High Court u/s 115, it must give reasons in support of the order. Having regard to the severely restricted ambit of the revisional jurisdiction of the High Court u/s 115, there does not appear to be any necessity or reason for introducing such principle. We are, therefore, of the view that it is not necessary that an order granting or refusing leave to defend a suit filed under the summary procedure must contain the reasons in support of the order. The order passed by the learned Judge granting conditional leave to defend the suit could not, therefore, be held to be bad on the ground that it did not set out the reasons which prevailed with the learned Judge in making the order.

13. In another matter coming before another Division Bench of the Gujarat High Court to which Bhagwati C.J. (as he then was) was a party (*United Industries v. Dalwadi & Co.* AIR 1969 Guj. 18), a contention was taken that the decision of the Supreme Court in [Bharat Raja Vs. The Union of India \(UOI\) and Others](#), had impliedly overruled the decision of the Gujarat High Court in *Vijakumar v. Pari Nareshchandra Firm*. The Gujarat High Court repelled that contention and pointed out that the decision of the Supreme Court in *Bharat Raja's* case dealt with the Central Government acting as a tribunal and it was therefore confined to tribunals exercising judicial or quasi judicial powers and reference to Courts of law was avoided. Bhagwati C.J. also said that (p. 21):

...The question whether an order made by a Court of law is required to be supported by a judgment setting out reasons would be governed by the Code of Civil Procedure. So far as an order granting or refusing leave to defend in a summary suit is concerned, there is no provision in the CPC which requires that such an order must contain reasons for making of the order.

14. In the light of the above discussion and confining ourselves to the Bombay City Civil Court we are of the view that it is not required of the Bombay City Civil Court in all cases to give reasons when granting leave to defend, refusing it or making a conditional order under Order XXXVII, Civil Procedure Code, as amended by this High Court. And it would not be correct to suggest that if reasons are not given the

order would be liable to be set aside on that ground alone.

15. If the matter before the City Civil Court is a complicated one or points of law or fact are of a somewhat involved nature then it would be indeed desirable and appropriate that reasons for making the order be briefly stated so that the superior Courts which may have occasion to deal with the matter may at least be informed as to what was in the mind of the Judge when he made the order.

16. In particular when leave is being refused (so that a decree is to follow) it would be even more necessary in the interest of justice, and because he is passing a drastic order, for the trial Judge to indicate briefly what the defences are and why they are being considered unless or worthless.

17. It requires to be stated that points to be considered by the High Court in a revision application are not necessarily disclosed by any reasons that may be recorded by the trial Judge in granting or refusing leave to defend. But it cannot be denied that whatever may be the grounds urged by a party in support of a revision application the High Court would always be in a better position to deal with those grounds if the views of the Judge of the City Civil Court making the order under challenge are available to it.

18. In this view of the matter the validity of the conditional order made on February 6, 1968 cannot be challenged on this ground, and the contention raised by Mr. Khare must be rejected.

[Rest of the judgment is not material to this Report.]