Lala Mata Din

Vs

A. Narayanan

Civil Appeal Nos. 2410 and 2411 of 1966

(CJI M. Hidayatullah, A.N. Grover JJ)

25.08.1969

JUDGMENT

HIDAYATULLAH, C.J. –

1. This is an appeal against the judgment, March 20, 1963, of a Division Bench of the Punjab High Court dismissing an appeal and a Revision filed by the present appellant. The appeal arises under the following circumstances : A suit was filed by the appellant in the Court of the Senior Sub-Judge, Delhi, for three reliefs in respect of a business in which the respondent was stated to be the manager and also for ejectment of the respondent from the premises in which the business was being carried on. The same valuation was adopted for purposes of court-fee and jurisdiction. The valuation was divided into three parts Rs. 4,000/- were taken as the valuation for rendition of accounts or arrears of rent, Rs. 130/- for injunction and Rs. 710/- for ejectment - Total Rs. 4,840/-. During the hearing of the suit and on objection by the defendant, the valuation for ejectment was raised to Rs. 1,800/-. It appears that the appellant paid the additional court-fee but did not amend the plaint. The suit was decreed in part on May 11, 1961. The appellant obtained a decree for Rs. 600/- as arrears of rent for 3/4 portion of the shop and Rs. 463.33P. as damages for 1/4 portion of the shop ejectment from which portion was also decreed in his favour. But the suit was dismissed as to the remaining arrears of rent or for accounts and ejectment from 3/4 of the premises.

2. The plaintiff (appellant) thereupon filed an appeal in the District Court of Delhi. In stating the valuation for the appeal, he correctly described the three-fold valuation in the suit as Rs. 4,000/-, Rs. 130/- and Rs. 1,800/- (total Rs. 5,930/-). He however valued the appeal as follows :

> Rs. 3,400/- as the valuation for arrears of rent or for rendition of accounts, Rs. 130/- for injunction and Rs. 1,350/- for ejectment. (Total Rs. 4,880/-).

3. Now it is obvious that if the valuation was Rs. 4,880/- the appeal would have lain in the District Court, but if the appeal had to be valued at Rs. 5,930/- it had to go before the High Court. When the notice of the appeal was served on the defendant (respondent) he filed a cross-objection in the same court but did not take any exception to the valuation of the appeal in the District Court on its presentation in that Court. On July 26, 1962, the District Judge made an order upholding a preliminary objection taken before him at the hearing that the memorandum of appeal was liable to be returned for presentation to the proper court, and he ordered the memorandum of appeal to be so returned. It appears that it was filed in the High Court the same day and, therefore, there was no loss of time after the return of the memorandum. The appeal was delayed by nearly one year.

4. It may, however, be mentioned that the plaintiff (appellant) did not submit to the decision of the

District Court but took the matter in revision before the High Court. The appeal as represented and the application for revision were disposed of by the common judgment under appeal before us. The High Court held that there was no ground for extending time under Section 5 of the Limitation Act for which purpose an application had been sub-joined to the appeal filed in the High Court.

5. The question in this case is whether the High Court was right in dealing with this problem as it did. The High Court seemed to be of the opinion that an Advocate (Mr. K. K. Raizada) of 34 years' standing could not possibly make the mistake in view of the clear provisions on the subject of appeals existing in Section 39(1) of the Punjab Courts Act. That sub-section at that time clearly showed that appeals of the value of Rs. 5,000/- must be filed before the District Court but appeals above Rs. 5,000/- must be filed before the High Court. The High Court also felt that the learned counsel persisted in pursuing his own theory by filing a revision. It is on this account that time was denied to the present appellant in the appeal. The only question is whether the decision of the High Court can be accepted.

6. The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have seen quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit or a wrong reading of the situation.

7. It is quite clear that the limitation for the appeal to the High Court was three times as much as it was for the District Court. When the appeal was filed, the litigant had as much as two months in hand to file the same in the High Court. Further he did not attempt to save court-fee on the appeal but paid the same court-fee which would have been payable in the High Court. It does not appear that he had an underhand motive for filing the appeal in the District Court. Therefore, the filing of the appeal must be attributed entirely to the advice of the counsel. Here again, the counsel did not suppress anything. As has been stated earlier, he put down both the valuations in the forefront of his memorandum of appeal, that is to say, the valuation of the suit in the original court and the valuation of the appeal. No doubt the counsel was one with some experience and ought to have known that an appeal above Rs. 5,000/- must be filed in the High Court and not the District Court and therefore, we have to see whether he was genuinely under a mistake or not. Here there is proof that he adhered to this view, because not only he filed the appeal but also took a revision from the order of the District Court to the High Court, still labouring under the same mistaken view. Further he seems to have been misled by a rule. i.e. Rule 4 in Chapter 3-B of Volume I of the rules and order of the High Court which read as follows :-

> "In a suit for the amount found to be due after taking into accounts, it is not the tentative valuation of the plaintiff, but the amount found to be due and decreed by the court that determines the forum of appeal."

This rule is applicable in a case in which the amount decreed is larger than the amount for which the original suit was brought. Now it is well-known that in a suit for accounts, the plaintiff is not obliged to state the exact amount which would result after the taking of accounts. He may do so if he is able to; but if he is not, he can put a tentative valuation upon his suit for accounts taking care that the valuation is adequate and reasonable in all the circumstances of the case. But the rule also obtains that if the amount which is found is larger than the amount at which he stated his tentative

valuation, he must file the appeal against the larger amount and in the forum before which an appeal of that valuation can go. This rule does not apply where the amount decreed is below the valuation in the original court. Here the original valuation holds good both to find the forum and to put a valuation. After the amendment of the valuation on account of ejectment the total claim was Rs. 5,930/- and that determined the court of lowest denomination before which the appeal from the suit had to go. That according to the other rule which we have cited was the High Court. The second rule, which we have later cited, does not cut across the first rule. This appears to be the error which was committed by Mr. Raizada and we do not find anything in the case to show that this error was tainted by any mala fide motive on the part of the counsel for the litigant. In the circumstances we think that the High Court would have been justified in extending time under Section 5 of the Limitation Act and the reasoning of the High Court unfortunately started from a wrong angle.

8. We accordingly set aside the order of the High Court and remit the appeal for hearing and disposal according to law. The appellant will however pay all the costs of the respondent which have been incurred till today irrespective of the result.

9. We may mention that there are two appeals pending before us. The other appeal is from the revisional order of the High Court and we think that there is no need to pronounce any decision in that appeal, because it becomes infructuous by reason of our decision in this appeal. As the appeal before the High Court is an old one, we hope that the High Court will be able to give it priority.

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