Smt. Swaran Lata Ghosh

Vs

H. K. Banerjee and Others

Civil Appeal No. 662 of 1966

(J. C. Shah, A. N. Grover JJ)

12.03.1969

JUDGMENT

SHAH, J. -

1. Birendra Krishna Ghosh - hereinafter called "Ghosh" - was practising as an attorney-at-law in the High Court of Calcutta. He died in August, 1950. H. K. Banerjee - the first respondent herein - commenced in 1951 an action in the High Court of Calcutta on the original side against Swaran Lata and Arun Kumar - widow and minor son respectively of Ghosh - for a decree for Rs. 15,000/- claiming that it was the balance of "capital deposits" due to him from Ghosh and Rs. 1,535/- interest due thereon. The plaintiff claimed that he had deposited with Ghosh Rs. 6,000/- on December, 10, 1946, for the "specific purpose of investing the amount" and the latter agreed to pay interest at the rate of 6% per annum and to repay the same or any portion thereof when demanded; that in or about February 17, 1948, he had deposited Rs. 10,000/- with Ghosh also for "the specific purpose of investing" that sum, and the latter had agreed to pay interest at the rate of 7% per annum and to repay the same or part thereof when demanded; that under the agreement Ghosh paid diverse sums of money as interest, and on July 3, 1947, Ghosh repaid Rs. 1,000/- out of Rs. 6,000/- deposited; and that the balance of Rs. 15,000/- and Rs. 1,535/- interest due thereon were repayable by the defendants to the plaintiff.

2. Swaran Lata filed a written statement denying the claim of the plaintiff. She denied that the sums of Rs. 6,000/- and Rs. 10,000/- were entrusted to or deposited with her husband as alleged by the plaintiff; she denied that her husband repaid any amounts towards interest or part payment of principal; and she submitted that the suit was in any event barred by the law of limitation.

3. The trial of the suit commenced before Law, J., on July 12, 1962. In support of the plaintiff's case four witnesses were examined. The plaintiff tendered in evidence extracts from certain Bank accounts and correspondence. He produced no documentary evidence in support of his case that any amount was deposited with Ghosh, on terms set out in the plaint. Apparently he relied upon the entries in the extracts from the statements of account with the United Bank of Indian Ltd., the Imperial Bank of India, the Hooghly Bank Ltd. and correspondence between him and Swaran Lata. The learned Judge by order, dated August 17, 1962, passed the following order :

> "There will be a decree for Rs. 15,000/- with interest on judgment on Rs. 15,000/- at 6% per annum and costs. No interim interest allowed."

Pursuant to that order a decree was drawn up.

4. Against the decree Swaran Lata appealed to the High Court under Clause 15 of the Letters Patent, and raised several grounds in the memo of appeal on the merits. The High Court disposed of the appeal by a short judgment observing :

> "We think that the plaintiff sufficiently proved the case made in the plaint. On the 10th December, 1946, the plaintiff entrusted and deposited with Birendra Krishna Ghosh a sum of Rs. 6,000/- for the express and specific purpose of investing the sum to yield interest at the rate of 6% per annum. He also entrusted and deposited with Birendra Krishna Ghosh on 17th February, 1948, a sum of Rs. 10,000/- for "the express and specific purpose of investing the sum of yield interest at the rate of 7 per cent. per annum."

The court observed that the amounts paid to Ghosh were deposits, within the meaning of Article 60 of the Indian Limitation Act, 1908, and since interest was paid in respect of both the deposits within three years of the institution of the suit, no question of limitation arose, and the Trial Court had "rightly decreed the suit". The High Court, however, modified the decree passed by the Trial Court and declared that the liability of the defendants was not personal and was limited only to "the assets and properties" of Ghosh received by them. With special leave, Swaran Lata Ghosh has appealed to this Court.

5. The defendants had been a written statement denying the averments in the plaint and had contested the claim of the plaintiff. The learned Judge apparently raised no issues. We have found in the printed paper book no record of any issues raised. On behalf of the plaintiff, witnesses were examined to prove the two deposits and the terms of the deposit which it was claimed were orally agreed upon. There was no documentary evidence supporting the case of the plaintiff relating to the agreements between him and Ghosh. There was also no documentary evidence supporting the case of payment of interest on the amounts deposited, or of re-payment of a part of the principal. Indisputably the pleadings of the parties raised substantial issues of fact for trial, and a lengthy trial was held. But the learned Trial Judge delivered no judgment. He merely decree the claim. The decree was on the face of it erroneous, because it directed Swaran Lata and her minor son Arun Kumar personally to pay the amount decreed.

6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in supported of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the court has decided against him, and more so, when the judgment is subject to appeal. The Appellant Court will then have adequate material on which it may determine whether the facts re properly

ascertained, the law has been correctly applied and the resultant decision is just. It is unfortunate that the learned Trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they though that the plaintiff had sufficiently proved the case in the plaint.

7. The defendants it is true led no oral evidence and produced no documentary evidence. But the defendants had apparently no personal knowledge about the transactions and there is no clear evidence on the record that the first defendant Swaran Lata had in her possession any books of account of the deceased which she could had produced and had withheld. The burden of proving the claim in all its details lay upon the plaintiff. Absence of documentary evidence in support of the case made the burden more onerous.

8. We are unable to agree with counsel for the plaintiff that "for all practical purposes" the action was undefended and that the Trial Judge recorded merely formal evidence in proof of the plaintiff's case. The defendants had filed a written statement denying the plaintiff's claim, had appeared by counsel at the trial, and had challenged the plaintiff's evidence by intensive cross-examination. The plaintiff who was the principal witness was asked as many as 317 questions and his examination appears to have taken the better part of a day. In the course of the examination in attempting to elicit the truth the learned Judge no mean or insignificant part. Three more witnesses were also examined.

9. We are also unable to agree that the only plea raised at the trial and in the court of the appeal was about the personal liability of the defendants. The evidence led at the trial and the cross-examination amply establish that the defendants defended the claim on the merits. The High Court in appeal modified the decree and restricted it to the estate inherited by the defendants from Ghosh. But there is no reason to hold that the only point argued before the Trial Court related to the extent of liability of the defendants. The grounds in the memorandum of appeal belie that submission.

10. It is true that Rules 1 to 8 of Order XX or the Code of Civil Procedure are, by the express provision contained in Order XLIX, Rule 3, Clause (5) inapplicable to a Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. A Judge of a Chartered High Court is not obliged to record a judgment strictly according to the provisions contained in Rules 4(2) and 5 Order XX, Code a Civil Procedure. But the privilege of not recording a judgment is intended normally to apply where the action is undefended, where the parties are not at issue on any substantial matter, in a summary trial of an action where leave to defend is not granted, in making interlocutory orders or in disposing of formal proceedings and the like. Order XLIX, Rule 3 of the Code of Civil Procedure undoubtedly applies to the trial of suits; but the question is not one merely of power but of exercise of judicial discretion in the exercise of that power. The function of a judicial trial is to hear and decide a matter in contest between the parties in open court in the presence of parties according to the procedure prescribed for investigation of the dispute, and the rules of evidence. The conclusion of the court ought normally to be supported reasons duly recorded. This requirement transcends all technical rules of procedure.

11. We may assume that the learned Trial Judge was satisfied that the claim of the plaintiff deserved to be decree. But the judgment of the learned Trial Judge was not final : it was subject to appeal and unless there was a reasoned judgment recorded by the Trial Judge, an appeal against the judgment may turn out to be an empty formality. A court of appeal generally attaches great value to the views formed by the Judge of First Instance who had seen the witnesses and noted their demeanour. How the Judge who tried the suit reacted to the evidence of a witness may not always be found from the printed record.

12. The plaintiff's case was founded upon extracts of Bank accounts; the extracts however do not evidence the agreement under which the money passed from the plaintiff to Ghosh. The plaintiff had to prove not only that money passed from him to Ghosh; he had to prove that money passed under the agreement pleaded by him. Oral testimony of the plaintiff had to be examined in the context of several weighty circumstance, e.g. complete absence of documentary evidence in the handwriting of Ghosh; absence of correspondence relating to the transactions between Ghosh and the plaintiff; absence of books of account in support of the transactions; improbability of a transaction of the nature pleaded between an attorney and the plaintiff; absence of any previous business or professional relationship between Ghosh and the plaintiff; absence of vouchers supporting the alleged payment of interest and repayment of part of the principal and other important circumstances. In reaching a conclusion the court had to consider the probabilities and the circumstances in which the plaintiff alleged that he had deposited the two sums of money with Ghosh. It was essentially a case in which there should have been a full record of the reasons which persuaded the learned Trial Judge to reach the conclusion he did. A mere order directing payment of the money; not supported by reasons, does not do duty for a judgment according to law.

13. We are, therefore, constrained to come to the conclusion that there has been no real trial of the defendant's case. It is a very unfortunate state of affairs that eighteen years after the date on which the suit was instituted, we have to remand the suit for trial according to law. But we see no other satisfactory alternative.

14. The decree passed by the High Court is set aside. The suit stands remanded to the Court of First Instance for trial according to law. It will be open to the learned Judge who tries the suit to proceed on the evidence already on the record. If the parties desire to lead any additional evidence, he will give them opportunity in that behalf. If the learned Judge is of the opinion that the witnesses should be examined over again before him, he may adopt that course.

15. As costs till now incurred are thrown away on account of circumstances for which the parties may not be held responsible, we direct that there will be no order as to costs till this date.

16. We may state that the observations made by us in the course of this judgment are not intended to express any opinion by this court on the merits of the dispute.

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