

Calcutta Port Trust

Vs

Shalimar Tar Products Ltd.

Civil Appeal No. 2244 of 1977

(M.M. Punchhi, S.C. Agarwal JJ)

07.11.1990

JUDGMENT

1. This appeal by Special Leave is against the judgment and order of the Calcutta High Court in Civil Rule No. 1533 of 1975 confirming in appeal the order of the trial Court whereby the suit of the plaintiff appellant v, as dismissed for non-production of documents under Order XI, Rule 21 of the Code of Civil Procedure.

2. The facts giving the rise are very simple. The plaintiff is the Calcutta Port Trust. Some land belonging to it together with structures thereon was let out to the respondent Company. A suit for a recovery of Rs. 1,04,299.72 paise was instituted by the appellant in the Court of the VIth Subordinate Judge at Alipur on the basis that the Company was in arrears of rent. This was the basis that the monthly rent as claimed by the appellant was Rs. 4131.41 plus Municipal Taxes which rent had later been increased to Rs. 5164.26 paise plus Municipal Taxes. The Defendant respondent took a long time to file its written statement. Finally in its written statement the defendant respondent admitted liable to pay rent but to the extent of Rs. 3423.76 paise per mensem. At the same time the defendant-respondent asked the appellant to produce certain documents. The Court passed the necessary orders requiring the plaintiff to produce documents for inspection under Rule 20 of Order XI. Since there was non-compliance of the order for inspection the plaintiff and his counsel were also absent, the suit was dismissed for nonprosecution on 22nd July, 1974. The appellate took the matter under appeal before the Calcutta High Court which was dismissed as barred by limitation. This has given rise to the present appeal by Special leave.

3. We have heard learned Counsel. There are two facets to the case. The suit of the appellant was partly contested, as is evident. To the uncontested part there was no dispute. The trial Court in face of the pleadings of the parties, and more so of the defendant, was obliged to pass decree for arrears of rent for the period in question at the conceded rate of Rs. 3423.76 paise. There was no option for the Court other than this. Order IX, Rule 8 of the Code of Civil Procedure enjoins the Court that where the defendant appears, and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder. On the uncontested part the trial Court was obliged to pass a partial decree in favour of the plaintiff even though he and his counsel were absent on the date when action was taken under Order XI Rule 21 of the Civil Procedure Code. The Order of the trial Court in dismissing the entire suit for non-prosecution was thus an error of jurisdiction and was correctable by the High Court,

even when not appealed against, under the provisions of Section 115 of the ' Civil Procedure Code on its own motion. The bar of limitation set up in the Appellate Judgment of the High Court, in our view, cannot stand in the way of partial decree of the suit. The same view of the High Court is otherwise sustainable for the remaining contested part of the suit. So we split both the orders of the trial Court as well as that of the High Court in confining these orders to the contested part of the claim of the plaintiff and right now pass the decree on the partially admitted claim of the plaintiff-appellant which, as per the plaint is for the period from February 70 to December 1971 at the rate suggested rent of Rs. 3423.76 paise. The appeal is thus partially allowed. Decree be prepared accordingly. There will be proportionate costs of the trial Court.

Appeal partly allowed.

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