SUPREME COURT OF INDIA

Shantilal Gulabchand Mutha

Vs.

Tata Engineering Locomotive Co. Ltd.

C.A.No.6162 of 2005

(Dr. B.S. Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

18.03.2013

ORDER

1. This appeal has been preferred against the judgment and order dated 22.6.2005 of the High Court of Judicature at Bombay, passed in Appeal No.478 of 2005 in Notice of Motion No.503 of 2004 in Suit No.1924 of 1988.

2. Facts and circumstances giving rise to this appeal are:

A. That the appellant had purchased five Tata Diesel Vehicles from the respondent No.1 for a sum of Rs.9,58,913/- which was to be paid in 8 installments through respondent No.2 as per repayment schedule. The appellant alleges that eight Bills of Exchange were drawn by the respondent no.1 upon the respondent no.2 – banker of the appellant and by way of which the entire amount was paid. Respondent no.1 filed Suit No.1924 of 1988 on 2.6.1988 against the appellant as well as the banker for recovery of sum of Rs.5,66,000/- alongwith interest. Summons were served upon the appellant and he entered appearance through advocate to contest the suit. However, subsequently under the impression that the entire amount had already been paid, he did not file the written statement. The High Court decreed the suit vide judgment and decree dated 12.11.2003 under the provisions of Order VIII Rule 10 of the Code of Civil Procedure 1908, (hereinafter referred to as 'CPC') without considering any issue involved therein or taking note of the pleadings in the plaint itself.

B. Aggrieved, the appellant took out a Notice of Motion bearing no.503 of 2004 in the said suit for setting aside ex parte decree dated 12.11.2003,

however, it stood rejected vide order dated 10.12.2004 holding it to be not maintainable in view of division bench judgment of the Bombay High Court wherein it had been held that any decree passed under Order VIII Rule 10 CPC could not be subjected to the application under Order IX Rule 13 CPC.

C. Aggrieved, the appellant filed the appeal which has been dismissed vide order dated 22.6.2005 concurring with the learned Single Judge.

Hence, this appeal.

3. We have heard Shri Prasenjit Keswani, learned counsel for the appellant and Shri Debmalaya Banerjee, learned counsel for respondent no.1 and perused the record.

4. This Court in Balraj Taneja Anr. V. Sunil Madan Anr., AIR 1999 SC 3381 dealt with the issue and held that even in such fact- situation, the court should not act blindly on the averments made in the plaint merely because the written statement has not been filed by the defendant traversing the facts set out by the plaintiff therein. Where a written statement has not been filed by the defendant, the court should be little cautious in proceeding under Order VIII, Rule 10, CPC. Before passing the judgment against the defendant it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly by passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who failed to file the written statement. However, if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. The power of the court to proceed under Order VIII, Rule 10 CPC is discretionary. The court further held that judgment as defined in Section 2(9) CPC means the statement given by the Judge of the grounds for a decree or order. Therefore, the judgment should be self- contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. The court further held as under:-

> "Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved." (Emphasis added)

5. In Bogidhola Tea Trading Co. Ltd. Anr. v. Hira Lal Somani, AIR 2008 SC 911, this Court while reiterating a similar view observed that a decree under Order VIII, Rule 10 CPC should not be passed unless the averments made in plaint are established. In the facts and circumstances of a case, the court must decide the issue of limitation also, if so, involved.

(See also: Ramesh Chand Ardawatlya v. Anil Panjwani, AIR 2003 SC 2508)

6. In view of the above, it appears to be a settled legal proposition that the relief under Order VIII Rule 10 CPC is discretionary, and court has to be more cautious while exercising such power where defendant fails to file the written statement. Even in such circumstances, the court must be satisfied that there is no fact which need to be proved in spite of deemed admission by the defendant, and the court must give reasons for passing such judgment, however, short it be, but by reading the judgment, a party must understood what were the facts and circumstances on the basis of which the court must proceed, and under what reasoning the suit has been decreed.

7. The instant case is required to be examined in the light of the aforesaid settled legal propositions. It is evident from the plaint that eight Bills of Exchange, all dated 4.6.1982 for the respective amounts had been inclusive of interest and each one of the said bills were accepted by the appellant payable at the Mercantile Bank Ltd. Bombay and the said bills were discounted by the respondent/plaintiff with its bankers. It is further admitted in the plaint that the bank of the appellant paid the said amount to the respondent/plaintiff on the respective dates, as the five amounts have been mentioned in para 5 of the plaint. However, as the same did not satisfy the entire demand, the suit was filed with the following prayer:- "That the Defendant No.1 and Defendant No.2 may be ordered and decreed to pay to the plaintiff the sum of Rs.999388.30p. as mentioned in paragraph 7 above together with interest on the sum of Rs.5,66,000/- at the rate of 18.5% per annum from the date of suit till payments."

8. The Trial Court while deciding Suit No.1924 of 1988 decreed the suit vide judgment and decree dated 12.11.2003, which reads as under:- "Advocate for the plaintiffs is present. Nobody is present for the defendants. The matter is on board for proceeding against the defendants for want of written statement. Suit is of 1988. So far no written statement is filed. Therefore, there shall be decree in favour of the plaintiffs and against the defendants under Order VIII Rule10 of the Code of Civil Procedure for a sum of Rs.9,99,388.30 with interest on the amount of Rs.5,66,000/- at 12% p.a. from the date of the suit till realization and costs. Prayer (a) only of the plaint is granted in the above terms. Decree be drawn up accordingly."

9. The appellant take Notice of Motion to set aside the aforesaid judgment and decree which was dismissed and the said order of dismissal has been approved by the division bench. We are not examining the issue as to whether such a judgment and decree ex parte could be subjected to the provisions of Order IX Rule 13 CPC but the court has not examined as to whether the suit was filed within limitation and whether on the basis of pleadings, the relief granted by the court could have been granted. The court did not even consider it proper to examine the case prima facie before passing the decree, as is evident from the above quotation. The same is complete impugned judgment.

10. As the Trial Court failed to meet the parameters laid down by this court to proceed under Order VIII Rule 10 CPC, the judgment and decree of the Trial Court dated 12.11.2003 is set aside and the case is remanded to the Trial Court to decide afresh. The appellant is at liberty to file the written statement within a period of 3 weeks from today and the Trial Court is at liberty to proceed in accordance with law thereafter. As the matter is very old, we request the High Court to conclude the trial expeditiously. The Original Record, if any, may be sent back forthwith.

Before parting with the case, we would like to clarify that we have not decided the issue as to whether application under Order IX Rule 13 CPC in such a case is maintainable.

The appeal is disposed of accordingly.