

## **BOMBAY HIGH COURT**

Waman Vasudeo Wagh

Vs.

Pratapmal Dipaji

Civil Revn. Appln. No. 1228 of 1959, , against decision of City Civil Court, J., Bombay in Suit No. 1308 of 1959

(Mudholkar, J.)

11.01.1960

### **JUDGMENT**

#### **Mudholkar, J.**

1. This is an application for revision of the order of the City Civil Court granting leave to the petitioner to defend the suit for the recovery of Rs. 18725/- with costs upon the condition of depositing Rs. 7500/- (as security). This application was made to this Court on 30-7-1959 and was admitted by Mr. Justice Gokhale on 31-7-1959. After the rule was served on the respondents, Messrs. Rustamji and Jinwala put in an appearance, made an application for expediting the hearing and for fixing a date for the hearing. That application was granted and the matter was directed to be placed for hearing before the Court today. In spite of this no one has appeared before me on behalf of the respondents.

2. It is no doubt true that the point raised here by Mr. Sakhardande is an important one as it deals with the practice which ought to have been followed by the City Civil Court in matters of this kind and I would have liked to hear the other side, However, as the other side has not chosen to appear before me, I am constrained to proceed in their absence.

3. The point which Mr. Sakhardande raised is this : It is that where a subordinate court makes an order which is open to appeal or revision it should give some reasons in support of that order. Here the question was whether the petitioner should be granted an unconditional leave to defend or whether the leave should be made conditionally upon his depositing a certain amount of money in court. The matter is undoubtedly in the discretion of the court 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. This Court has laid down in *Rawalpindi Theatres Private Ltd. v. M/S. Film Group*<sup>1</sup>. that in a summary suit the Court must grant leave to the defendant to defend that suit unconditionally if the affidavit filed by the defendant discloses a triable issue. From the order of the learned Judge it is not

<sup>1</sup> Bom 60 Bom LR 1373

possible to ascertain whether he had at all considered the question as to whether the affidavit filed by the petitioner discloses a triable issue. 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 defense made by the defendant and then give its reasons for its conclusion that the defense discloses a triable issue or that it does not disclose one. It is undoubtedly true that the Court has been given discretion to grant or not to grant leave to defend a summary suit and that the revisional court or the appellate court-will not lightly interfere with it. But in order to enable the superior Court to discharge its duty it must know the reasons which led the subordinate Court to exercise its discretion in a particular way. Unquestionably the discretion conferred on the Court is a Judicial discretion and ought to be exercised on sound judicial principles. It cannot be exercised in an arbitrary manner. Where a court exercised its discretion arbitrarily this Court will certainly interfere with it in revision.

4. Since the order of the learned Judge does not disclose any reasons in support of his discretion it is not possible to say whether in making it he exercised his discretion judicially. I therefore, set it aside and remit the matter to it for passing a fresh order with advertence to the above remarks.

5. Costs of this petition will be costs in the suit.

Order set aside.