

M. VISHWESHWARA SHASTRY
v.
M. GOPALAKRISHNA BHAT AND ORS.

MARCH 7, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Pleadings -Written Statement—Direction for filing within specific time—Delayed filing—Due to bona fide mistake of the party—On realization of the mistake application made to extend the time for filing—Rejection of application—On appeal, held: The party entitled to extended time for filing since his bona fide proved—Code of Civil Procedure, 1908—Order VIII.

Civil Judge had dismissed the petition for restoration of the suit which had been decreed ex-parte. First appeal thereagainst was allowed on payment of cost, with direction to the appellant to file the Written Statement within 2 weeks. According to the appellant he was informed by his advocate that Written Statement was to be filed within 2 months. Accordingly he filed the Written Statement within 2 months and also offered the cost. The counsel for the other party refused to accept the cost on the ground of delayed payment. On going through the certified copies, appellant noticed that the time granted by High Court was 2 weeks and not 2 months. Hence he moved the High Court seeking extension of time. The same was dismissed summarily. Hence the present appeal.

Allowing the appeal, the Court

HELD: The appellant had indicated sufficient reasons as to why there was non-compliance with the order of the High Court. The bona fides have been spelt out in detail and, in fact, there was no reply denying the averments made by the plaintiff who was the opposite party no. 1 in the application. That being so, the High Court was not justified in summarily rejecting the application. [Paras 9 and 10] [631-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5809 of 2000.

From the Final impugned Order dated 24.11.1999 of the High Court of Karnataka at Bangalore in I.A. No. 2/1999 in M.F.A. No. 2323/1997.

A S.N. Bhat for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Appellant calls in question legality of the order passed by a learned Single Judge of the Karnataka High Court, dismissing the application filed by the appellant for extension of time to comply with the earlier order dated 25.6.1999.

2. A brief reference to the factual aspects would suffice:

C 3. Appellant filed Misc. First appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (in short the 'Code') against order dated 30.5.1997 passed by the learned Civil Judge Puttur (D.K.) dismissing petition filed under Order IX Rule 13 read with Order XVII Rule 2 of the Code for restoration of the suit which had been decreed ex-parte. Appellant was defendant No. 5 in the suit.

D 4. By order dated 25.6.1999 the learned Single Judge allowed the appeal, inter-alia, with the following directions:

E "In the result, the appeal is allowed on payment of cost of Rs.1,000/- . The impugned order is set aside. The appellant is directed to file the written statement within 2 weeks from the date of this order and the trial court shall dispose of the suit within 3 months from the date of receipt of this order, after framing necessary issues."

F 5. It is the case of the appellant that his advocate on 30.6.1999 wrongly informed him that the written statement was to be filed within two months and the cost was to be paid within the said time. The written statement was tendered on 2.8.1999 and cost was offered to the learned counsel for the plaintiffs. The said learned counsel refused to accept the amount on the ground that the same was offered after the due date. Appellant filed a memo before the Civil Judge for accepting the deposit. However, the learned Civil Judge called for the records of the original suit no. 17/1995 and directed that the deposit can be made only after receipt of the records.

G 6. On going through the certified copies, the appellant noticed that actual time granted was two weeks and not two months. He, therefore, made an application before the High Court to extend the time. The same has been rejected by the following order:

H

OFFICE NOTE

A

"I.A. II for extension of time

Advocate for appellant has filed an I.A. and affidavit praying to extend the time set for filing of the written statement and payment of cost by 2 months for the reasons stated in the I.A. Post I.A II for orders before S.J.

B

Orders of Court

Heard. IA 2 is dismissed."

7. Learned counsel for the appellant submitted that because of the bona fide mistake the directions of the High Court could not be complied with and the fact that the written statement was tendered and the cost offered within two months proves the bona fides. The High Court without indicating any reason has dismissed the application.

C

8. There is no appearance on behalf of the respondents in spite of service of notice.

D

9. We find that the appellant had indicated sufficient reasons as to why there was non-compliance with the order of the High Court. The bona fides have been spelt out in detail and, in fact, there was no reply denying the averments made by the plaintiff who was the opposite party no. 1 in the application.

E

10. That being so, the High Court was not justified in summarily rejecting the application. Therefore, we set aside the order of the High Court. Let the written statement be filed within four weeks from today, if not already filed on record of the trial court. The costs shall be paid within the aforesaid time. If the aforesaid conditions are fulfilled the order dated 25.6.1999 in MFA No. 2323 of 1997 shall be treated to be operative.

F

11. The appeal is allowed with no order as to costs.

K.K.T.

Appeal allowed.

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