

Davinder Kumar Sharma vs Vijay Kumar Sharma on 12 February, 2019

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 572/2018 & CM APPL. 19969/2018
DAVINDER KUMAR SHARMA Petitioner
Through: Mr. SK Bhaduri, Adv.

versus

VIJAY KUMAR SHARMA Respondent
Through: Respondent in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 12.02.2019 At the outset, the respondent was asked whether he is assisted by any counsel and a submission was made by him to the effect that he is represented by a counsel before the learned trial Court but that he does not need any assistance of any counsel qua the present petition qua which the petitioner herein assails the impugned order dated 06.03.2018 in RCA 61258/2016 of the Court of the learned ADJ-04 (Central), THC vide which the prayer made by the petitioner herein seeking the waiver of the costs imposed vide order dated 05.12.2017 whilst allowing an amendment to the suit filed by the petitioner as the plaintiff of the same,- had been disallowed. In view of the said submissions that have been made by the respondent, the arguments have been allowed to be addressed even in the absence of the counsel for the respondent.

On behalf of the petitioner it has been submitted that the costs as imposed vide order dated 05.12.2017 vide which an application under Order VI Rule 17 r/w Order I Rule 10 & Section 151 of the CPC, 1908 as CM(M) 572/2018 page no.1 of 6 amended filed by the petitioner as the plaintiff of the suit RCA 61258/2016 was allowed by the Appellate Court and that the suit which had initially been filed by the plaintiff had already been dismissed but the amendment was granted by the Appellate Court observing to the effect that the amendment that had been sought by the plaintiff i.e. the petitioner herein would not in any manner change the basic nature of the suit and the amendment was necessary for determination of the main question in controversy. It has been submitted on behalf of the petitioner herein in reply to a specific Court query that the suit as initially filed was one for rendition of accounts and that the application that was allowed by the Appellate Court was an application vide which the petitioner had sought the impleading of Studio Jagdamba Movie as well as seeking that the suit be amended to one from merely rendition of accounts to a suit for dissolution of the partnership firm as well which amendment was granted vide the order dated

05.12.2017 by the First Appellate Court but whilst observing to the effect that the suit was filed in the year 29.04.2002 and the application was filed on 24.08.2015 and the application was much delayed in view of which, the application of the appellant was allowed subject to costs of Rs.1,00,000/- to be paid to the counsel for the respondent on the next date. Vide order dated 06.03.2018 also assailed vide the present petition, the application seeking the waiver of the said costs imposed vide order dated 05.12.2017 was declined by the First Appellate Court observing to the effect that reliance that had been placed on Section 35(A) of the CPC, 1908 as amended was inapplicable in as much as the same had not been brought into force in Delhi. Furthermore, it was observed vide the impugned order dated 06.03.2018 that the costs had been CM(M) 572/2018 page no.2 of 6 imposed keeping in view the facts and circumstances and reasons as detailed in the order dated 05.12.2017 and no ground was made out for any waiver of the said costs as imposed. It has been submitted on behalf of the petitioner whilst placing reliance on the verdict of the Hon'ble High Court of Patna in the case Ratan Prakash Singh Vs. The State of Bihar & Ors., a judgment dated 02.08.2016 to contend that costs in the said case which had been imposed to the tune of Rs.50,000/- for deleting the name of the Governor from the array of parties, had been reduced to Rs.3,000/- in terms of Section 35(A)(2) of the CPC, 1908 as amended. It has been submitted on behalf of the petitioner placing reliance on the verdict of the Hon'ble Division Bench of this Court in Bikramjit Ahluwalia Vs. Avniya Ahluwalia (Minor) Thr. Next Friend in FAO (OS) 173/2016, a verdict dated 14.02.2017 to submit qua costs imposable under Section 35(A) of the CPC it having been held that even if costs as imposable thereunder are low and not even restitutive much less punitive, the same nevertheless has to be followed and the limitation prescribed under Section 35(A) of the CPC cannot be breached in the absence of any change in the corresponding rules. Vide the said judgment vide para-21 it was further observed to the effect:

"21. Thus we are left with no option but to set aside such part of para 9 of the impugned order wherein the learned Single Judge has saddled the appellant with actual costs, to be computed on the basis of an affidavit on behalf of the plaintiff about the expenses incurred from the time of filing of Order VII Rule 11 application till its dismissal. The cost which would be awarded to the plaintiff and would be paid by the appellant would be a figure which would be computed by the learned single Judge in accordance with the relevant provisions of the Code of Civil Procedure and the Delhi High Court Rules. For the aforesaid purpose the case CM(M) 572/2018 page no.3 of 6 would be placed, in the first instance, before the learned single Judge on 21.02.2017."

Reliance is also placed on the observations in para-18 of the said verdict which reads to the effect:

"18. But while dealing with the residuary/inherent powers under Section 151 of the CPC for the purposes of imposing higher costs held at para 99 as follows:-

"99. It is trite that an order imposing reasonable and realistic costs is necessary to do the right and undo the wrong by an unscrupulous litigant in the course of administration of justice. This court, constituted for the purpose of doing justice, must be deemed to possess the power to pass an order necessary to prevent the abuse

of the process of the court in exercise of its appellate jurisdiction under the Delhi High Court Act and the Code of Civil Procedure. Such order would include an order for full restitution in the nature of realistic costs as mentioned by the several authoritative and binding precedents in addition to the compensatory or punitive costs for false or vexatious claims contemplated in Section 35A or 35B of the Code."

It is essential to observe that as in terms of the verdict of the Hon'ble Division Bench of this Court in *Bikramjit Ahluwalia Vs. Avnija Ahluwalia (Minor) Thr. Next Friend* apparently Section 35(A)(2) of the CPC is applicable to Delhi and such observation by the First Appellate Court vide the impugned order dated 06.03.2018 cannot thus be accepted. Furthermore, Section 35A of the CPC relates to imposition of costs on vexatious claims or defences, and the said aspect is not germane to the present case.

However, in terms of Section 35(B) of the CPC, there is no embargo stipulated qua the imposition of costs except to the extent that the costs CM(M) 572/2018 page no.4 of 6 imposable thereunder need to be reasonable.

On behalf of the petitioner it has been submitted further to the effect that the provision of Section 35(B) of the CPC, 1908 as amended cannot apply to the facts and circumstances of the instant case in as much as the Section 35 (B) of the CPC would apply only to proceedings in a suit and that in the instant case, the petitioner had sought amendments as prayed before the First Appellate Court. It is needless to observe that the appeal would be a continuation of the proceedings in the suit that the plaintiff had filed qua which the plaintiff filed the appeal before the First Appellate Court after dismissal of the suit. However, in terms of Section 35(B) of the CPC as observed hereinabove to the effect that the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition for the prosecution of the proceedings.

It has been submitted on behalf of the petitioner that the petitioner has been suffering with several ailments and that he has undergone a kidney operation qua which it has been submitted on behalf of the respondent in person that there are several litigations in as much as eight litigations launched by the petitioner against the respondent and that the contention thus raised on behalf of the petitioner that the costs imposed vide the impugned order dated 05.12.2017 r/w order dated 03.06.2018 of the First Appellate Court are harsh can not in any manner be accepted.

CM(M) 572/2018 page no.5 of 6 Taking into account the proceedings dated 05.12.2017 which indicate that the amendment had been sought after institution of the suit on 29.04.2002 on 24.08.2015, apparently the respondent has been burdened severely through the entire proceedings that he has faced. In the interest of justice, however, taking into account the stated ailment of the petitioner, the costs imposed vide order dated 05.12.2017 in RCA 61258/2016 are reduced to Rs.50,000/- to meet the ends of justice.

The petition is disposed of.

ANU MALHOTRA, J

FEBRUARY 12, 2019

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