Supreme Court of India
Vikas Aggarwal vs Anubha on 12 April, 2002
Author: B Kumar
Bench: D.P. Mohapatra, Brijesh Kumar

CASE NO.:
Appeal (civil) 2660 of 2002

PETITIONER:
VIKAS AGGARWAL

Vs.

RESPONDENT:
ANUBHA

DATE OF JUDGMENT: 12/04/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

BRIJESH KUMAR, J.

Leave granted.

Heard learned counsel for the parties. This appeal has been preferred against the judgment and order dated 18.10.2000 passed by Delhi High Court dismissing the appeal challenging the order by which appellant's defence was struck of in the proceeding, suit No.1966 of 1999 pending in Delhi High Court on the Original side.

The appellant and the respondent were married on 11.05.1999. Thereafter they went to USA. They do not seem to have pulled on well so much so that the appellant filed a divorce petition in America as early as on 22.7.1999. The notice of the said proceedings was served on the respondent. She however, left America and somehow managed to come back to India. She filed a suit on 6.9.1999 in Delhi High Court being Suit No.1966 of 1999 impleading the appellant Shri Vikas Agarwal as defendant and praying that a decree be passed declaring that the plaintiff is entitled to live separately, for maintenance amounting to 1500 dollars (Rs.65,250/-) expenses pendantalite etc. and for such other, further orders, directions as the Court would deem fit and proper in the circumstances of the case, so as to meet the ends of justice. The learned Single Judge of Delhi High Court passed an interim order on 5.11.1999 in the following terms:-

"For the present in the interest of justice, and since no permanent prejudice is likely to be caused to the Defendants if the hearing in divorce case pending in the Superior Court, State of Connecticut, U.S.A. is deferred for a short period, I restrain the Defendant from proceeding further in the Superior Court, State at Connecticut, U.S.A. for a period of thirty days from today."

The appellant however, moved an application on 12.11.1999 for recall of the order dated 5.11.1999. The Court was later on informed on 16.12.1999 that decree for divorce had been passed at Connecticut U.S.A. The learned Single Judge, on 9.3.2000 passed an order, directing the defendant to appear in person, under order 10 C.P.C. The defendant preferred an appeal against the Order dated 9.3.2000 before the Division Bench which was withdrawn with a statement that an application will be moved before the learned Single Judge for recall of the order. It will not be necessary to mention about many other applications, which have been moved in that connection from time to time. The fact remains that ultimately by order dated 24.8.2000, the Court struck of the defence of the appellant: The operative part of the order reads as under:-

"It is quite clear that despite several opportunities granted to the defendant to appear before this Court he has resolutely refused to do so. The defence of defendant is therefore, struck of."

An appeal preferred against the said order before the Division Bench of the High Court has also been dismissed which order has been impugned in the present appeal. It appears that need to seek clarification from the defendant-appellant arose when it came to the notice of the learned Single Judge of Delhi High Court that on 23rd November, 1999 the Court in America passed decree of divorce despite the order of restraint against the defendant passed on 5.11.1999. The Court seems to have doubts if the order passed by it was truly communicated to the American Court since there was no mention at all about that fact in the order passed by the American Court. The appellant also moved an application for seeking exemption from appearing in the Court in Delhi, as he apprehended that on coming to India he may be arrested in pursuance of the proceedings initiated against him under Section 498-A of the Indian Penal Code. By order dated July 3, 2000 the learned Single Judge took care of the same and provided that the defendant would not be arrested in pursuance to any complaint or pending FIR filed by the plaintiff. The defendant was required to appear on August 24, 2000. He again failed to appear in the Court, instead an affidavit of the Attorney of the appellant in America was filed stating that he had brought the injunction order to the notice of the American Court, but the Court had refused to enforce any restraint order, as Indian Court had no jurisdiction over the U.S. Court's proceedings. Such information, it is submitted on behalf of Respondent, as furnished through affidavit also leads to the inference that the interim order dated November 5, 1999 was not correctly placed at all before the American Court as the Delhi High Court had not passed any order putting any restraint on the American Court to proceed with the matter. The restraint order was against the defendant, namely the appellant before us. It is submitted on behalf of the Respondent that the defendant-appellant should also have moved appropriate application along with interim order before the court in America. In this back ground, the learned Single Judge ordered for presence of the defendant in Court under Order 10 CPC. On non-compliance of the said order, ultimately the defence was struck of.

Shri Vikas Singh learned counsel appearing for the appellant has vehemently urged that Order X CPC would not be applicable at all and the order of the Delhi High Court in that respect is invalid. Our attention has been brought to Order X CPC which reads as under:-

Examination of parties by the Court.

1. Ascertainment whether allegations in pleadings are admitted or deniedAt the first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The court shall record such admission and denials.

2. Oral examination of party, or companion of party.-- (1) At the first hearing of the suit, the court

(a) shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in the court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.

(2) At any subsequent hearing the court may orally examine any party appearing in person or present in court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.}

3. Substance of examination to be written. the substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4. Consequence of refusal or inability of pleader to answer.(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in Rule 2, refuses or is unable to answer any material question relating to the suit which the court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit."

On the basis of the above provision, it is submitted that a party can be examined under Order X CPC on the first hearing of the suit, but that stage has not yet reached in the present case. It is submitted that first hearing of the suit would not be any date before a date fixed for settlement of issues. In that connection, he has placed reliance upon certain decisions in which first date of hearing has

been indicated in reference to rent control disputes between landlord and tenant. The next contention is that under Rule 4 of Order X a party may be required to appear where the counsel or the person accompanying the pleader refuses to or is unable to answer any material question relating to the suit. In the present case, it is submitted that the information sought was furnished to the Court. There was no refusal on the part of the counsel or the person accompanying the counsel, namely father of the defendant appellant to answer the questions. Therefore, it was not necessary to order for personal attendance of the defendant. Yet another submission is that question in relation to which a party is required to be present to be examined should be an important or material question relating to the suit. It is submitted that the defendant was not required to give clarification to any such important or material question. It is submitted that for the above three reasons the order is bad. Yet another submission which has been made is that no order of injunction could be passed against a foreign court in view of the provisions contained under Section 41(a) & (b) of the Specific Relief Act.

Shri Shanti Bhushan, learned Senior Counsel appearing for the respondent submitted that the questions raised by the learned counsel for the appellant are not relevant, since undisputedly there is non-compliance of the order passed by the Court requiring the defendant to be personally present in the Court. It is submitted that the Section 41 (a) & (b) of the Specific Relief Act would not bar passing of an order as passed on 5.11.1999 by the learned Single Judge of Delhi High Court since such a bar is in relation to the superior Courts i.e. to say the Courts in India, it would not apply to Courts out side India and next that the restraint order is against the party namely, the defendant, who was restrained from proceedings in the matter for a period of one month. (reliance has been placed on 1987(1) SCC 496 Oil and Natural Gas Commission Vs. Western Company of North America). It has been held in an appropriate case, it is open to pass a restraint order against a party in proceedings pending in foreign courts. It is further submitted that the learned Single Judge had passed the injunction order on 5.11.1999 for a period of one month, but the decree was granted on 23.11.1999. The defendant was bound by the order and should not have taken any steps in furtherance of the proceedings pending in American Court. On the other hand, the decree of divorce shows that the decree was sought and passed on agreement (no fault divorce) between the parties which is described as fair and equitable. The agreement is also stated to be attached with the decree. It is also to be seen that columns meant for alimony etc. were left blank. The defendant was restrained by the learned Single Judge of Delhi High Court, at the instance of the wife, the respondent, from further proceeding in the divorce case. It is submitted that this itself shows that the divorce was far from one on the basis of agreement. In this view of the matter, learned counsel for the respondent submits that the Court rightly felt need for personal appearance of the defendant for clarification. The defendant failed to appear on one ground or the other and lastly on the ground of apprehension of loosing job in America.

This Court also gave time to the learned counsel for the appellant to find out in case it would be possible for him to appear before the learned Single Judge of Delhi High Court. The learned counsel has placed before the Court a letter received from the appellant addressed to his counsel dated March 7,2002 expressing his inability to visit India for another 6 to 9 months due to financial and job constraints. He further informs that he is involved in many mission- critical projects. Therefore, granting of leave, would also not be possible, to him. It is also indicated that he has no property, no

house, no bank account, no job and no place to live in India. These facts are hardly relevant for the purposes of present matter. We need not go into the other facts and circumstances, which have been placed by the learned counsel for the respondent to show the manner in which, within two months of the marriage, the appellant had filed "no fault divorce" in American Court and obtained decree on agreement in the teeth of injunction order dated 5.11.1999 passed by Delhi High Court and the appellant having abandoned the plaintiff-respondent in America and the difficulties with which she managed to return to India.

Shri Shanti Bhushan, learned senior counsel appearing on behalf of the respondent submits that in the facts and circumstances of the case as indicated above, the learned Single Judge of the Delhi High Court was quite justified in requiring the defendant-appellant to personally appear before the Court for his clarification. It is further submitted that the affidavit of the counsel for the appellant in America annexed with the affidavit filed in the trial court was not enough to clarify the position and the father of the appellant, as found by the trial court, could not throw further light in the matter, having not been present during the proceedings in America. So far the question regarding first date of hearing is concerned, it is too technical a ground to consider the matter like one in hand. The decisions which have been relied upon relate to the disputes between tenant and landlord and while interpreting the term "first date", the provisions of the Rent Control Statutes have also been taken into account. It is submitted that inherent powers of the Court under Section 151 C.P.C. can always be exercised to advance interests of justice and the technicalities will have no place in such matters. In this connection a reference has been made to a decision of this Court reported in (1966) 3 S.C.R. 856 - M/s. Ram Chand and Sons Sugar Mills Pvt. Ltd. Versus Kanhaya Lal Bhargava and others. In this case also the defendant was required to attend the Court to answer certain questions but flouted the order and did not appear. Ultimately the defence was struck of. The contention that inherent powers under Section 151 CPC could not be exercised was repelled and it was held that there was nothing in Order XXXIX of the Code which expressly or by necessary implication precluded the exercise of inherent power of Court under Section 151 CPC and it was open for the Court to pass a suitable consequential order under Section 151 CPC as may be necessary for ends of justice or to prevent the abuse of process of Court. A reference has also been made to a decision reported in 1962 Supp. (1) S.C.R. 450 - Manohar Lal Chopra versus Rai Bahadur Rao Raja Seth Hiralal so as to indicate the wide scope of Section 151 CPC where as per the majority view, in the facts and circumstances of the case, it was open to pass an injunction order under Section 151 CPC where it may not be in conflict with any provision of Order XXXIX of the Code or other provision of law. The submission which has been advanced by the learned counsel for the respondent is that in the present case the learned trial court was totally justified in requiring the presence of the defendant and on his failure to comply with that order the trial court rightly struck of defence which order would be perfectly justified in view of inherent powers of the Court under Section 151 CPC besides other powers vested in it.

We would like to observe that Order X CPC in an enabling provision providing that the court at the first hearing of the suit shall ascertain from each party about their pleadings. It does not in any manner place any bar on the powers of the court to seek clarification from any party in an appropriate case, at any date earlier than one fixed for framing of issues so as to advance the interest of justice. It would not be in violation of Order X CPC or in conflict thereof. Considering the facts

and circumstances of the case we agree with the submission made on behalf of the respondent and find that the appeal lacks merit so as to call for any interference by us under Article 136 of the Constitution.

In the result the appeal is dismissed with costs.

.J (D.P. Mohapatra) ..J (Brijesh Kumar) April 12, 2002