

CIVIL REVISION

Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 25.08.2010

C.O. No. 4446 of 2007

Shyam Kishor Sahu

Versus

Ajit Kumar Das.

Points:

Evidence- Evidence closed as per the order of remand-Whether the trial court can permit the plaintiff to adduce evidence- Code of Civil Procedure, 1908 O 18

Facts:

The plaintiff's suit was decreed holding that the plaintiff required the suit premises for starting business of his own in the suit premises. The defendant preferred an appeal, and in that appeal the defendant filed an application under Order 41 Rule 27 of the Code of Civil Procedure praying for permission to adduce additional evidence upon certain facts that took place during pendency of the suit. The petition for amendment of the written statement was allowed and the suit was remanded back to the learned Trial Judge for recording evidence in accordance with law. Thereafter, the defendant adduced evidence. Then the evidence on behalf of the parties was closed and the suit was fixed for hearing argument. At that stage, the plaintiff filed a petition praying for taking off the case record from the argument stage. He filed another application under Order 18 of the C.P.C. praying for permission to adduce rebuttal evidence against the claim

adduced by the defendant in the additional written statement. That application was allowed by the trial court.

Held:

After remand, the plaintiff was required to adduce evidence denying the contention raised by the defendant by way of amendment of the written statement and thereafter the defendant was required to adduce evidence in support of his defence. The plaintiff having not availed of that opportunity to rebut the contention raised in the written statement, he cannot be allowed to adduce evidence after close of the evidence on behalf of the defendant. If the plaintiff is allowed adduce evidence, the defendant is required to adduce further evidence denying the statement of the plaintiff and this is not the way of recording evidence on behalf of the parties. Therefore, the order impugned is not in accordance with law. So, it cannot be supported. Accordingly, the order impugned is hereby set aside. Para 3

For the Petitioner: Ms. Arpita Saha.

Prasenjit Mandal, J.: This application is at the instance of the defendant and is directed against the order no.297 dated August 9, 2007 passed by the learned Civil Judge (Junior Division), First Court, Asansol, District – Burdwan in Title Suit No.281 of 1983 thereby allowing an application filed by the plaintiff for adducing further evidence.

2. The short fact is that the plaintiff/opposite party instituted a suit for declaration and for khas possession after evicting the defendant from the premises/shop room and other reliefs. That suit was hotly contested by the defendant/petitioner. Ultimately, the suit was decreed in favour of the plaintiff holding that the plaintiff required the suit premises for starting business of his own in the suit premises. The defendant/petitioner preferred

an appeal against the said judgment and decree. In that appeal, the defendant/petitioner filed an application under Order 41 Rule 27 of the Code of Civil Procedure praying for permission to adduce additional evidence upon certain facts that took place during pendency of the suit. The petition for amendment of the written statement was allowed and the suit was remanded back to the learned Trial Judge for recording evidence in accordance with law. Thereafter, the defendant/petitioner adduced evidence. Then the evidence on behalf of the parties was closed and the suit was fixed for hearing argument. At that stage, the plaintiff/opposite party filed a petition praying for taking off the case record from the argument stage. He filed another application under Order 18 of the C.P.C. praying for permission to adduce rebuttal evidence against the claim adduced by the defendant in the additional written statement. That application was allowed by the order impugned giving an opportunity to adduce evidence on behalf of the plaintiff/opposite party. Being aggrieved, this application has been preferred by the defendant / petitioner.

3. Upon hearing the learned Advocate for the petitioner and on perusal of the materials on record, I find that after remand, the defendant adduced evidence and the evidence on behalf of the defendant has been closed. The case was fixed for hearing argument. At that stage, the plaintiff filed an application under Order 18 of the C.P.C. to adduce evidence. After remand, the plaintiff was required to adduce evidence denying the contention raised by the defendant by way of amendment of the written statement and thereafter the defendant was required to adduce evidence in support of his defence. The plaintiff having not availed of that opportunity to rebut the contention raised in the written statement, he cannot be allowed to adduce evidence after close of the evidence on behalf of the defendant. If the

plaintiff is allowed adduce evidence, the defendant is required to adduce further evidence denying the statement of the plaintiff and this is not the way of recording evidence on behalf of the parties. Therefore, the order impugned is not in accordance with law. So, it cannot be supported. Accordingly, the order impugned is hereby set aside. The application of the plaintiff for permission to adduce rebuttal evidence against the claim alleged by the defendant stands dismissed. The learned Trial Judge shall proceed with the suit from the stage of argument over the suit, in accordance with law.

4. This application is allowed in the manner indicated above.
5. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

