

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No. 203 of 2015

Date of decision: 31st December, 2015

Savitri Devi	Petitioner
Versus	
Maya Devi and another	Respondents

Coram :

The Hon'ble Mr. Justice Tarlok Singh Chauhan, J.

Whether approved for reporting ?

For the Petitioners : Mr. Vivek Chandel, Advocate

For the Respondents:

Tarlok Singh Chauhan, J. (Oral)

This is an unfortunate case where the petitioner has been driven to this Court only because of hyper-technical approach, adopted by the learned Court below in dismissing the application for setting aside an order of dismissal in default.

2. It appears that the civil suit, filed by the petitioner for permanent prohibitory injunction and in the alternative for the mandatory injunction, came to be listed before the

Court below on 23.12.2014 when it was called thrice in pre-lunch session. Thereafter, since none appeared on behalf of the parties, the suit was ordered to be dismissed in default. The petitioner, thereafter, filed an application under Order 9 Rule 4 read with Section 151 of the Code of Civil Procedure for setting aside the order, dated 23.12.2014, but the same was dismissed by recording the following reason:-

“This is an application u/o 9 rule 4 CPC for setting aside the dismiss in default order, dated 23.12.2014.

Application and record perused. After perusal, it came out neither the certified or uncertified copy of order, dated 23.12.2014 filed nor C.S. number for which the applicant seeking setting aside order, dated 23.12.2014 mentioned.

Therefore, present application is liable to be dismissed file after its due completion be consigned to record room.”

2. It is the specific case of the petitioner that since both the counsel had noted the next date of hearing as 27.12.2014 instead of 23.12.2014, this led to their non appearance on 23.7.2014, when the matter was actually listed before the Court. There appears to be some substance in the argument raised by the petitioner as it may be for

this reason that none of the parties put in appearance before the learned trial Court on 23.12.2014 and the respondents have even not chosen to contest the present proceedings. Be that as it may, did it behove the learned Court below to have passed the impugned order in such a hyper-technical manner without caring for the cause of justice. This Court in **Neelam Kumari Vs. Yogender Singh and others, 2015 (3) HLR 1895** while adversely commenting upon the hyper-technical approach of the Courts, held as under:-

“8. The proposition that Rules of Procedure are handmaid of justice and cannot take away the residuary power in Judges to act ex debito justitiae, where otherwise it would be wholly inequitable, is by now well founded.

9. It must be remembered that the Courts are respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so and further taking into consideration the fact that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done.

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would

leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

12. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

13. It is useful to quote the oft-quoted passage of Lord Penzance in 1879 (4) AC 504:

“Procedure is but the machinery of the law after all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve.”

14. In the matter of **Sangram Singh vs. Election Tribunal, Kotah** reported in AIR 1955, S.C. 425, the Hon'ble Apex Court has observed as under:

“Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provide always that justice is done to both sides) less the very means designed for the furtherance of justice be used to frustrate it.”

“Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded

from participating in them. Of course there must be expectations and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso our laws of procedure should be construed, wherever that is reasonably possible in the light of that principle.”

15. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (See: *Blyth v. Blyth* (1966 (1) All E.R. 524 (HL)).

16. In *Balwant Singh Bhagwan Singh and another vs. Firm Raj Singh Baldev Kishen* reported in AIR 1969 Punjab and Haryana 1971 it was held that:

“Promptitude and despatch in the dispensation of justice is a desirable thing but not at the cost of justice. All rules of procedure are nothing but handmaids of justice. They cannot be construed in a manner, which would hamper justice. As a general rule, evidence should never be shut out. The fullest opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process fee arises from negligence or carelessness.”

17. In the matter of *State of Gujarat vs. Ramprakash P. Puri*, reported in 1970 (2) SCR 875, the Hon’ble Apex Court has held that:

“Procedure has been described to be a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause.”

18. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the

mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justiciae* where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence – processual, as much as substantive. (See *Sushil Kumar Sen v. State of Bihar* (1975) 1 SCC 774).

19. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See *Shreenath and Another vs. Rajesh and others* AIR 1998 SC 1827).

20. The Hon'ble Supreme Court in (2007) 9 Scale 202 (R.N. Jadi & Brothers vs. Subhash Chandra), considered the procedural law vis-à-vis substantive law and observed as under:

“9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.”

21. Procedure is only handmaid of Justice:- All the rules of procedure are the handmaids of justice. Any interpretation which eludes substantive justice is not to be followed. Observing that procedure law is not to be a tyrant, but a servant, in *Sambhaji and others vs. Gangabai and others* (2008) 17 SCC 117, the Hon'ble Supreme Court held as under:

“6.(14) Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

22. In 2011 (1) Scale 469 **Rajendra Prasad Gupta vs. Prakash Chandra Mishra and others**, the issue before the Hon'ble Supreme Court was as to whether an application will be maintainable before the trial Court to withdraw the application filed earlier for withdrawal of the suit. The trial Court dismissed the application as not maintainable. The High Court held that once the application for withdrawal of the suit is filed the suit stands dismissed as withdrawn even without there being any order on the withdrawal application and as such another application at a later point of time to withdraw the suit was not maintainable. When the matter was taken up in appeal, the Hon'ble Supreme Court disagreed with the views expressed by the High Court. While allowing the appeal, the Hon'ble Supreme Court observed thus:

“5. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted.”

23. The Hon'ble Supreme Court in 2011 (6) Scale 1 **Mahadev Govind Gcharge and others vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka**, reiterated the legal position regarding procedural law and observed:

“28. Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold.....”

3. Adverting to the merits of the case, it is shocking that the application for restoration came to be dismissed only on the ground that the copy of the order, dated

23.12.2015 and also the case number had not been mentioned in the application. The learned Court below has failed to take into consideration that quite often in the sub divisions there are shortcomings in the pleadings, as such pleadings are not to be construed strictly; the Court has to look into only the substance of the pleadings to render substantial justice. It is more than settled that the pleadings in the mofussil sub division are not strictly construed as pleadings in the High Court and reference in this regard can conveniently be made to the judgment of the Hon'ble Supreme Court in **Badat and Company, Bombay Vs. East India Trading Company, AIR 1964 SC 538** and **Des Raj and others Vs. Bhagat Ram (dead) by LRs. and others, (2007) 9 SCC 641.**

4. In view of the aforesaid discussion, the impugned order, passed by the learned Court below on 30.07.2015 is set aside. Resultantly, the suit shall stand restored to its original number. The petition stands disposed of, so also the pending applications, if any.

31st December, 2015(K)

(Tarlok Singh Chauhan),
Judge

