



2024 INSC 724

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2394/2023

RANJIT SINGH & ANR.

APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO.2395/2023

CIVIL APPEAL NO.2396/2023

CIVIL APPEAL NO.2398/2023

CIVIL APPEAL NOS.2399-2401/2023

CIVIL APPEAL NO.2402/2023

CIVIL APPEAL NO.2403/2023

J U D G M E N T

ABHAY S OKA, J.

CIVIL APPEAL NOS.2399-2401/2023

1. The appellants are the defendants in a suit filed by the first respondent and one Shanti Devi, who is no more and has been shown as the third respondent in these Appeals. For convenience, we are referring to the parties with reference to their status in the suit. We have heard the learned counsel for the parties.

2. The suit was filed on 8th November, 2001 for possession of the property, more particularly described in the schedule (suit property). The allegation in the suit is that the first defendant, the State of Uttaranchal (now Uttarakhand), was a tenant of the

plaintiffs in respect of the suit property at a monthly rent of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirty-two), which was fixed by an order dated 18th May, 1999 passed by the learned 3rd Additional District Judge, Dehradun. The allegation is that though the rent was fixed with effect from 1st September, 1993, the first defendant did not pay the rent. Therefore, the plaintiffs issued a notice of termination of tenancy under Section 106 of the Transfer of Property Act, 1882. As the defendants failed to comply with the said notice, the suit for eviction was filed.

3. It appears from the record of the Trial Court that after the service of summons on the defendants, they appeared and applied for adjournments for filing the written statement. The first such application was made on 13th December 2001. Subsequent applications were made for adjournments. On 22nd April 2002, the learned trial Judge did not accede to the prayer for grant of further time and passed an order that the suit would proceed *ex parte* and a date for *ex parte* hearing, i.e., 30th May 2002, was fixed. At this stage, we may also note that the plaintiffs also made an application to strike out the defence of the defendants. The said application was filed on 18th February 2002. On the said application, the Advocate for the plaintiffs made an endorsement in the margin that as there was no advocate representing the defendants, a copy of the application was attached to the application. Though the date for the *ex parte* hearing was already fixed as 30th May 2002, on 3rd May 2002, the plaintiffs made an application to the Trial Court for passing an order on the

application dated 18th February 2002 for striking out the defendants' defence. Interestingly, on the same day, the plaintiffs moved another application stating that the plaintiffs may be permitted to lead their *ex parte* evidence through affidavits. It appears that on 3rd May, 2002, the Trial Court allowed the application for striking out the defence. Subsequent facts narrated in this judgment would show that the suit was taken on the cause list on that day without any notice to the defendants.

4. On 16th May, 2002, an application was moved by the defendants for setting aside the order dated 22nd April, 2002. In the application, the averments were made that on 22nd April, 2002, the District Judge before whom the suit was pending, was holding a Camp Court at Mussoorie. We may note that the suit was pending in the Court at Dehradun. The contention in the said application was that as the learned District Judge was unavailable, the defendants were under the impression that the suit would not proceed. In fact, in the affidavit filed in support of the said application by one Mukesh Kumar Malik on behalf of the Superintendent of Police, Dehradun, it is stated that he was present on 22nd April 2002 till 4:00 p.m., but the case was not called out. On 30th May, 2002, the application for setting aside the order directing the suit to proceed *ex parte* was rejected. At this stage, we may note here that in the proceedings of 22nd April 2002, it was recorded that on that day, the lawyers had abstained from the Court work, and the learned Presiding Judge was on a tour of Mussoorie for holding a camp. There is no mention in the proceedings of 22nd April, 2002

that any in charge Judicial Officer passed an order to proceed with the suit *ex parte*. To the specific allegations made by the defendants in the application for setting aside the *ex parte* order that the Judicial Officer was not available, in the reply filed by the plaintiffs in paragraph 4, all that is stated is that the contentions that on 22nd April, 2002, the learned District Judge had proceeded to Mussoorie, are misconceived and the provisions of the Assam and Agra Civil Courts Act are apparent in this respect.

5. On 1st July, 2002, the defendants applied for setting aside the order dated 3rd May, 2002 by which their defence was struck out. The application proceeds on the allegation that on 3rd May, 2002, the Court proceeded to strike out the defendants' defence without giving them an opportunity of being heard and the hearing was conducted *ex parte*. Very interestingly, a reply was filed to the said application by the plaintiffs in which a stand has been taken that as the suit was directed to proceed *ex parte*, there was no occasion to give an intimation to the defendants or their counsel that the application will be taken up on 3rd May, 2002. Therefore, it is an accepted position that the application for striking out the defence of the defendants was taken up on the cause list on 3rd May 2002 without issuing notice to the defendants, though on 22nd April, 2002, the next date was already fixed as 30th May 2002. The application for setting aside the order dated 3rd May, 2002 was rejected. At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed *ex parte* against him, the limited defence

available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation. Therefore, notwithstanding an order passed earlier to proceed *ex parte*, while deciding an application for striking out the defence, it was the duty of the Court to give an opportunity of being heard to the defendants. However, that was not done. As the suit was fixed on 30th May, 2002, the defendants were entitled to a notice that the suit would be taken up on an earlier date for hearing the application for striking out the defence. When the defendants had appeared in the suit, the act of preponing the date without notice to them or their advocate was completely illegal and contrary to elementary principles of natural justice. Therefore, it follows that the order striking out the defendants' defence is completely illegal, and the said order deserves to be set aside.

6. There is something further which must be noted. As can be seen from the record, the plaintiffs moved an application on 2nd August, 2002 to amend the description of the suit property. The endorsement on the application records that 'the case is proceeding *ex parte* against the defendants'. Therefore, a copy of the said application was not served upon the defendants. As seen from the proceedings, the application was allowed on 2nd August, 2002. Thereafter, the suit was decreed on 24th August, 2002. It is true that before the application for amendment of the plaint was

allowed, the defendants' defence was already struck out. Even if the defendants' defence was struck out, the defendants were entitled to a copy of the amended plaint. What was struck out was the right to defend the suit as unamended. Whether the subsequent plaint will affect the earlier order of striking out the defence will depend upon the nature of the amendment. However, even a copy of the amended plaint was not served on the defendants.

7. The defendants challenged the *ex parte* decree by filing a statutory revision application under Section 25 of the Provincial Small Cause Courts Act, 1887, before the learned Single Judge of the High Court. By the impugned judgment, the learned Single Judge rejected the said revision application without noticing the glaring facts borne out from the record which we have reproduced above. A review of the said order of the learned Single Judge was sought. However, the same was dismissed on 4th January, 2011. However, the defendants did not challenge the decree or the order passed on the revision application or review for three years. Instead, they were advised to raise objections under Section 47 of the Code of Civil Procedure, 1908 in the execution proceedings.

8. The learned senior counsel appearing for the plaintiffs submitted that the defendants' conduct needs to be deprecated. The revenue entries were illegally altered to enable them to raise a contention regarding the lack of title on the part of the plaintiffs. Even the State Government prosecuted the plaintiffs.

9. Now, the clear picture which emerges is that the suit was decreed *ex parte* without giving proper opportunity to the defendants to defend themselves. On 22nd April 2002, when the order directing that the suit would proceed *ex parte* was passed, the date fixed for *ex parte* hearing was 30th May 2002. On that date, the defendants could have appeared and applied for setting aside the said order. The Court could have always favourably considered that application by putting the defendants to conditions. However, without waiting till 30th May, 2002, on 3rd May 2002, without issuing notice to the defendants, the suit was taken up by the Trial Court, and an order of striking out the defendants' defence was passed, obviously, without hearing the defendants. Therefore, an illegality has been associated with the conduct of the suit proceedings and the manner in which the *ex parte* decree was passed. Consequently, we propose to set aside the orders dated 22nd April, 2002 and 3rd May, 2002 and relegate the suit to that stage.

10. There is another aspect of the matter. On 18th May 1999, the 3rd Additional District Judge, Dehradun, passed an order in an Appeal directing the defendants to pay rent at Rs.86,232/ (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month. The High Court and this Court confirmed the said order. The defendants' liability under the said order was to pay rent at Rs.86,232/- per month from 1st September, 1993. The learned Attorney General for India, on instructions of the State Government, states that the rent at the said rate has been deposited up to date. We take the statement on record.

11. Much water has flown after the rent was fixed at the rate of Rs.86,232/- per month on 18th May, 1999. The fact remains that the proceedings were delayed due to some default on the part of the defendants. Therefore, as a condition for setting aside the *ex parte* decree, we propose to direct the State Government to pay an ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month from 14th July, 2014 and continue to pay the said amount till the disposal of the suit. The deposit will be subject to the outcome of the suit. The defendants will be entitled to an adjustment of the amounts they paid at the rate of Rs.86,232/- per month. We propose to grant two months to the defendants to pay the balance amount payable up to date at the rate of Rs.1,00,000/- per month from 14th July, 2014.

12. Hence, we set aside the impugned orders and partly allow the Appeals with the following directions:

(i) The *ex parte* decree dated 24th August, 2002 passed by the learned District and Session Judge, Dehradun, in SCC Suit No.24/2001 is hereby set aside. The suit is restored to the file of the learned District and Session Judge, Dehradun, subject to the condition of the appellants/defendants depositing an ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month from 14th July, 2014 with the Trial Court within a period of two months from today. As stated earlier, the appellants/defendants will be entitled to an adjustment of Rs.86,232/- (Rupees Eighty-six Thousand Two

Hundred and Thirty-two) per month deposited by them for the said period. We make it clear that on the failure of the appellants/defendants to deposit the said amount within the stipulated period, the *ex parte* decree shall stand revived;

(ii) If the direction mentioned above is complied with, even the orders dated 22nd April, 2002 and 3rd May, 2002 will stand set aside;

(iii) The defendants shall continue to deposit the amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month till the disposal of the suit;

(iv) In the event the compliance is made by the appellants/defendants, we direct that the restored suit shall be listed before the learned District and Session Judge, Dehradun in the morning on 25th November, 2024. We make it clear that the defendants and the plaintiffs shall be under an obligation to appear before the Court of the learned District and Session Judge, Dehradun, on that day, and no further notice shall be served upon them. We clarify that on the date of appearance, the appellants/defendants shall file a reply to the application for striking out the defence, and no further time shall be granted to them for that purpose. If the appellants/defendants fail to file a reply to the application for striking out their defence on that day, the Trial Court will be justified in proceeding with the hearing of the said application without the reply of the appellants/defendants;

(v) Only after deciding the application for striking out the defence, depending upon the outcome of the said application, the Trial Court will pass orders regarding permitting the appellants/defendants to file written statement;

(vi) The amounts deposited in this Court at the rate of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month with accrued interest thereon shall be transferred by the Registry of this Court to the Trial Court at Dehradun after expiry of the present fixed deposit. We direct the Trial Court to invest the amount which may be deposited by the appellants/defendants in terms of this judgment and the amount which will transferred by the Registry of this Court to the Trial Court in a fixed deposit with any nationalised bank;

(vii) After the application for striking out the defence is decided, it will be open for the plaintiffs to apply for withdrawal of the amounts. The Trial Court shall decide the said application on its own merits. All contentions on that behalf are left open;

(viii) We make it clear that we have made no adjudication on the merits of the controversy, including the title issue raised by the appellants/defendants. The Trial Court shall pass appropriate orders in accordance with the law in the restored suit on its own merits;

(ix) We make it clear that as we have directed the appellants/defendants to deposit the ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month, we are not passing a separate order of costs;

(x) Considering the fact that the suit is of the year 2001, it is obvious that the Trial Court will give necessary out of turn priority for hearing the application for striking out the defence. In the event the suit is required to be heard on merits, the Trial Court will give the necessary priority to the disposal of the suit, considering the fact that the suit is of the year 2001;

(xi) In view of this judgment, the pending execution application for execution of the decree will not survive. However, if the *ex parte* decree is revived in terms of the clause (i) above, the execution application shall proceed;

(xii) The findings recorded in this judgment are only for the limited purposes of considering the legality and validity of the *ex parte* order and the order by which the defence of the defendants was struck out. This judgment will not affect any other proceedings pending between the parties and all contentions therein are left open;

(xiii) The Appeals are partly allowed on above terms; and

(xiv) The Registry is directed to immediately return the

record of the suit along with a copy of this judgment to the Trial Court.

CIVIL APPEAL NO.2394/2023

1. As the execution application has been disposed of in terms of the judgment passed today in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The same is disposed of accordingly.

CIVIL APPEAL NO.2395/2023

1. The compulsory acquisition of the property claimed by the appellants was initiated by the State Government, which has been set aside by the impugned judgment. The appellants cannot have any grievance about setting aside the acquisition. Hence, no case for interference with the impugned order is made out. The Appeal is, accordingly, dismissed.

CIVIL APPEAL NO.2396/2023

1. As the execution application has been disposed of in terms of the judgment passed today in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The same is disposed of accordingly.

CIVIL APPEAL NO.2398/2023

1. The application made by the appellant under Rule 97 Order XXI of the Code of Civil Procedure, 1908, has been dismissed by the executing Court on the ground that the appellant was not in possession. It is an admitted position that the appellant was not in possession. Therefore, we find no error in the view taken under the impugned order. The Appeal is, accordingly, dismissed.

CIVIL APPEAL NO.2402/2023

1. As the decree dated 24th August, 2002 has been set aside in terms of the judgment in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The Appeal is disposed of accordingly by keeping all the contentions in the restored suit expressly open.

CIVIL APPEAL NO.2403/2023

1. Admittedly, this Appeal arises from the orders passed in the execution of the decree dated 24th August 2002. Therefore, in view of the judgment passed today in Civil Appeal Nos.2399-2401/2023 setting aside the decree dated 24th August 2002, this Appeal will not survive, and the same is disposed of accordingly.

.....J.
(ABHAY S. OKA)

.....J.
(AHSANUDDIN AMANULLAH)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 12, 2024.