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A suit cannot be decreed solely on the basis of the defendant's failure to file a written statement without the plaintiff proving its own case.

A 3 (three) judge bench of the Hon'ble Supreme Court of India ("Supreme Court") in *Asma Lateef & Anr. vs Shabbir Ahmad & Ors.*¹ has *inter alia* held that Order VIII Rule 10, Code of Civil Procedure, 1908 ("CPC") is not a mandatory provision and a court is not bound to pass a judgment in favour of the plaintiff merely because the defendant has failed or neglected to file his written statement. It is only on being satisfied that none of the several defendants have filed their written statement(s) and there is no fact which needs to be proved on account of deemed admission, could the court proceed to pass a judgment / decree against the defendant who has not filed a written statement.

Brief Facts

The case at hand dealt with a civil suit² instituted by Asma Lateef and another ("Appellants") under Section 38 of the Specific Relief Act, 1963 ("Specific Relief Act") praying for a permanent injunction against Shabbir Ahmad and others ("Respondents/Original Defendant") from interfering with the Appellants' peaceful possession of the suit property. Thereafter, one of the Respondent / Original Defendant – Kazmi filed his written statement before the trial court contending that the suit was not maintainable as the same was barred in view of Section 41(h) of the Specific Relief Act. Pertinently, it is to be noted that no written statement was filed on behalf of the other 2 (two) Respondents / Original Defendants.

In view of the subsequent death of the Respondent / Original Defendant – Kazmi, the suit against him stood dismissed as abated. The Appellants thereafter moved an application before the trial court under Order VIII Rule 5 and 10 of the CPC for pronouncement of judgment against the remaining 2 (two) Respondents / Original Defendants, which was allowed by the trial court by its order dated August 5, 1991.

As purported decree holders, the Appellants filed an execution application³ before the executing court and prayed for interim reliefs to restrain the Respondents from interfering with the suit property, which was granted *vide* interim order dated January 16, 1998. Thereupon, the Respondents filed objections under Section 47 of CPC submitting that the order dated August 5, 1991, was neither a 'judgement' nor a 'decree', and therefore was not capable of execution. The objections were duly allowed by the executing court, resulting in the dismissal of the execution application. The revision application filed by the Appellants against the order of dismissal by the execution court was considered and found merit in by the revisional court, which directed the execution court to proceed with the execution of the decree.

¹ Civil Appeal No.9695 of 2013.

² Original Suit No. 58 of 1990.

³ Execution Application No. 58 of 1997.

Aggrieved by the order of the revisional court, the same was challenged by the Respondents before the Hon'ble Allahabad High Court (“**Allahabad HC**”) under Article 227 of the Constitution of India⁴, which led to the Supreme Court quashing the order of the revisional court and relegating of the parties for adjudication before the appropriate forum.

The Appellants thereafter filed the special leave petition before the Supreme Court challenging the judgement and order of the Allahabad HC.

Issues

Whether the order dated August 5, 1991, suffered from a jurisdictional error so grave that the decree drawn up subsequently is incapable of execution by the executing court and an objection that it is inexecutable was available to be raised under Section 47 of the CPC by the Respondents.

Analysis and Findings

The Supreme Court after appreciating the submissions advanced by the parties, extensively analysed the scheme of Order VIII Rule 10 of the CPC and the scope and nature of Section 47 of the CPC. Accordingly, the Supreme Court *inter alia* observed as follows:

1. Scheme of Order VIII Rule 10 of the CPC:

- a) After noticing the procedure as laid down in Order VIII Rule 10 of the CPC, wherein if a party fails to present a written statement within the stipulated time, the court may pronounce the judgment against such party, the Supreme Court clearly held that the same is permissive in nature and not a mandatory provision. The same was buttressed by a plain reading of the provision, which provides for 2 (two) alternatives in a case where no written submission has been filed by a respondent.
- b) Therefore, if the law laid down made it mandatory to render a judgment against a party that has failed to file its written statement, the second alternative of ‘*making such order in relation to the suit as it (the court) thinks fit*’ would be rendered otiose. Reliance was placed upon *Balraj Taneja vs Sunil Madan*,⁵ in which the Supreme Court ruled that a court need not pass a mechanical judgment merely relying on the plaint when no written statement is forthcoming from the respondent.
- c) Furthermore, the Supreme Court observed that the power under Order VIII Rule 10 of the CPC ought to be invoked with care, caution, and circumspection, and only in cases where none of several defendants have filed their written statements. Moreover, if the plaint itself consists of disputed questions of fact, it would be advisable to avoid passing a judgment in favour of such plaintiff without due consideration to the evidence adduced and submissions made.

2. Objections to maintainability and jurisdiction:

- a) Coming to the issue framed, the Supreme Court went on to deal with the objections raised under Section 47 of the CPC by the Respondents and whether the same were tenable and good in law. As Section 47 of the CPC mandates that an executing court must determine all questions arising between parties to a suit, the Supreme Court by relying on *Vasudev Dhanjibai Modi vs Rajabhai Abdul Rehman*,⁶ held that an executing court can dismiss an execution application if the decree put to execution is unmistakably found to suffer from an inherent lack of jurisdiction, rendering it a nullity in the eye of law.
- b) Furthermore, by quoting the full-bench judgment of the Calcutta High Court in *Hirday Nath Roy v Ramachandra Barna Sarma*,⁷ the Supreme Court opined that it is no longer *res integra* that a court must not only have the jurisdiction in respect of the subject matter of the dispute, but also the jurisdiction to grant relief that is sought

⁴ Civil Misc. Writ Petition No. 15236 of 2009.

⁵ (1999) 8 SCC 396.

⁶ (1970) 1 SCC 670.

⁷ 1920 SCC OnLine Cal 85.

for. The obvious position of law that emerges from the discussion is that a civil court must determine the issue of jurisdiction at the commencement and not at the conclusion of the enquiry.

- c) Although not directly pertaining to the case at hand, the Supreme Court also observed that at the stage of considering the question of grant of interim relief, if the opposing party raises a point of maintainability thereof, the court ought to record at least a *prima facie* satisfaction that the suit before it is maintainable and not barred by law.
- d) Therefore, it would be improper for a court to abstain from recording its *prima facie* satisfaction that it has the requisite jurisdiction, yet proceed to grant protection *pro tem* assuming that the point of maintainability would be decided as a preliminary issue under Order XIV Rule 2 of the CPC. Nevertheless, the Supreme Court carved out an exception for extraordinary situations where forming an opinion on maintainability may take time and non-grant of protection could lead to irreversible consequences.

In light of the discussion above, the Supreme Court while upholding the order of the Allahabad HC, held that the trial court had no authority to decree the suit against the Respondent under Order VIII Rule 10, CPC for non-submission of their written statements.

JSA Comment

By way of this judgment, the Supreme Court has comprehensively laid down the scheme under Order VIII Rule 10 of the CPC and has clarified that the mere non-filing of a written statement by the defendant would not automatically entitle a plaintiff to have a decree drawn up in its favour, without proving its own case (*by leadings relevant evidence*).

The judgment also reaffirms the settled principle that a plaintiff's case must '*stand on its own legs*' and that a court must apply its judicial mind and satisfy the requirements of Order XX Rule 4(2) read with Section 2(9) of the CPC while pronouncing a 'judgment'.

By holding that the issue of maintainability must be *prima facie* decided before granting any relief, the Supreme Court has ensured that the interest of all the interested parties is safeguarded.

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