

A SIDDALINGAYYA

v.

GURULINGAPPA & ORS.

(Civil Appeal No. 868 of 2011)

B SEPTEMBER 05, 2017

[R. K. AGRAWAL AND D. ABHAY MANOHAR SAPRE, JJ.]

Code of Civil Procedure, 1908 – Or. VIII – Written statement – Opportunity to file – On facts, in suit for recovery by appellant trial court did not grant sufficient opportunity to respondents to file written statement and decreed the suit against the respondents – First appeal there against dismissed – Second appeal allowed by the High Court, while setting aside the judgment decree of two courts below and case remanded to the trial court for deciding the civil suit afresh on merits after affording opportunity to respondents to file written statement – Imposition of cost of Rs. 11,250/- on respondents to be paid to appellant as a pre-condition for filing the written statement within the extended time – On appeal, held: Reasoning and the conclusion arrived at by High Court is justified – Time was granted to respondents to file written statement initially before closing their right to file written statement, yet the trial court instead of closing their right to file written statement should have granted some time to respondents subject to payment of reasonable amount of cost to the appellant to compensate the inconvenience caused to the appellant.

F **Dismissing the appeal, the Court**

HELD: 1.1 The High Court made no mistake in allowing the respondents' appeal and remanding the suit to the trial court for fresh trial on merits after affording an opportunity to the respondents (defendants) to file their written statement to enable them to contest the suit on merits. [Para 14][479-G]

G **1.2** It is true that the time was granted to the defendants to file written statement initially before closing their right to file written statement, yet the trial court instead of closing their right to file written statement should have granted some time to the

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A 3. The appellant is the plaintiff whereas the respondents are the defendants in the suit out of which this appeal arises.

4. The appellant filed a civil suit being O.S. 286 of 1993 against the respondents (defendants) in the Court of Munsiff - Indi (Bijapur) for recovery of Rs.45,000/- by way of damages. According to the appellant, the respondents illegally demolished his construction and thereby caused monetary loss and injury to him and hence the suit to recover the monetary loss suffered by him.

5. The respondents entered appearance but failed to file their written statement despite time granted by the Court.

C 6. The Trial Court, however, declined to grant further time to file written statement to the respondents though asked for and accordingly proceeded to record evidence of the appellant (plaintiff) and by judgment/decree dated 24.02.1997, decreed the suit of the appellant(plaintiff) for Rs.45,000/- against the respondents(defendants).

D 7. The defendants, felt aggrieved, filed first appeal before the Principal Civil Judge at Bijapur being R.A. No.103 of 1997. By judgment dated 04.12.2002, the Appellate Court dismissed the appeal and affirmed the judgment/decree of the Trial Court. Felt aggrieved, the defendants filed second appeal being R.S.A. No.220 of 2003 before the High Court.

E 8. By impugned judgment, the High Court allowed the second appeal and while setting aside the judgment/decree of the two Courts below remanded the case to the Trial Court for deciding the civil suit afresh on merits after affording an opportunity to the respondents (defendants) to file written statement.

F 9. It was held that the Trial Court did not grant sufficient opportunity to the respondents to file written statement, due to which they had to suffer the decree without any contest causing prejudice in defending the suit. The High Court, however, imposed a cost of Rs.11,250/- on the defendants to be paid to the plaintiff as a pre-condition for filing the written statement within the extended time granted.

G 10. It is against this order of the High Court, the plaintiff has felt aggrieved and filed this appeal by way of special leave before this Court.

11. Mr. Rajesh Mahale, learned counsel for the appellant (plaintiff). None appeared for the respondents though served.

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12. Having heard the learned counsel for the appellant and on perusal of the record of the case, we are not inclined to interfere in the remand order of the High Court impugned in this appeal. A

13. This case reminds us of the apt observations of a great Judge of this Court (Vivian Bose, J.). His Lordship, speaking for the Bench, in his inimitable style of writing said in **Sangram Singh vs. Election Tribunal Kotah & Anr.** (AIR 1955 SC 425) as under: B

“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 (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. 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 continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions 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.” C
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14. Keeping the aforementioned observations in mind and examining the facts of the case at hand, we are of the considered opinion that the High Court made no mistake in allowing the respondents' appeal and remanding the suit to the Trial Court for fresh trial on merits after affording an opportunity to the respondents (defendants) to file their written statement to enable them to contest the suit on merits. F
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15. It is true that the time was granted to the defendants to file written statement initially before closing their right to file written statement, yet in our view, the Trial Court instead of closing their right to file written statement should have granted some time to the defendants H

A subject to payment of reasonable amount of cost to the plaintiff to compensate the inconvenience caused to the plaintiff. The High Court was, therefore, right in imposing a cost of Rs.11,250/- on the defendants to be paid to the plaintiff as a pre-condition to file the written statement within the extended time granted by the High Court.

B 16. In our view, here comes the application of observations of Vivian Bose J. when His Lordship said *“Too technical a construction of a section that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of*
C *procedure are grounded on a principle of natural justice, which requires that men should not be condemned unheard, that decision should not be reached behind their back, 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.”*

D 17. Having observed this, His Lordship cautioned *“of course there must be exceptions too and where they are clearly defined they must be given effect to”* and finally His Lordship concluded observing *“But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible,*
E *in the light of that principle.”*

18. The approach of the High Court, which resulted in remand of the case to the Trial Court for deciding the suit on merits after affording full opportunity to the defendants to contest the case and, at the same time, making it obligatory to pay cost of Rs.11,250/- to the plaintiff was,
F in our view, in tune with the aforementioned observations and did substantial justice to both the parties.

19. In view of foregoing discussion, we concur with the reasoning and the conclusion arrived at by the High Court and find no merit in the appeal. It is accordingly dismissed.

G 20. We, however, find that none appeared for the respondents (defendants) in this appeal though served. The Trial Court will now take up the suit to its file and will issue notice of suit proceedings to the respondents/defendants for their appearance in the suit.

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21. On their entering appearance pursuant to service of fresh notice, the Trial Court will grant them some time to deposit the cost amount fixed by the High Court and also to file their written statement. A

22. Failure to deposit the cost within the time fixed so also the written statement would result in revival of the decree passed by the Trial Court against the defendants. B

23. In the event of defendants depositing the cost and filing written statement as directed, the Trial Court will frame issues and allow the parties to adduce their evidence and cross-examine the witnesses, who were already examined and will also allow them to adduce additional evidence both oral and documentary. C

24. Let the trial in the suit be over within six months from the date of appearance of the parties. The record of the case be sent back forthwith to the Trial Court, if requisitioned here.

25. The appellant (plaintiff) to appear before the Trial Court on 3.10.2017 with the copy of this order to enable the Trial Court to proceed in the trial of the suit, as directed above. D