

to be an expression of opinion on the merits. The Court should, I may observe, endeavour to avoid giving rise to an apprehension that it intended to act as an adviser to either litigant before it: the Court is an impartial adjudicator under a solemn duty to hold the scales of justice even which should not even appear to be inclined, which is another way of saying that justice must also be clearly seem to be done.

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Chaplain
v.
Prem Nath
and others

Dua, J.

Setting aside the impugned orders, I remit the case back to the Court below for further proceedings in accordance with law and in the light of the observations made above. Parties have been directed to appear in the Court below on 20th September, 1965 when another short date would be given for further proceedings. Since the present litigation unfortunately arises out of proceedings relating to the management of an institution of importance and long standing which is understood to be doing great service to the youth and also to the public at large, it would be desirable that the present unpleasant controversy be disposed of with due despatch and without avoidable delay. There would be no order as to costs in this Court.

R. S.

REVISIONAL CIVIL

Before Shamsher Bahadur, J.

M/s. RAM CHAND & SONS SUGAR MILLS
(P) LTD.,—Petitioner.

versus

KANHAYA LAL BHARGAVA AND ANOTHER,—Respondents

Civil Revision No. 289-D of 1965

Code of Civil Procedure (Act V of 1908)—S. 151 and O. 29, R. 3—Suit against a company—Director of the Company ordered to appear in Court to answer material questions relating to the suit—Director not appearing in spite of various opportunities granted—Defence of the Company—Whether can be struck off.

1965

August, 27th

Held, that under Order 29, Rule 3 of the Code of Civil Procedure, 1908, the Court has the power to summon a director of the Company to appear in Court to answer material questions relating to the suit. If the director does not appear, the Court will be justified in striking off the defence of the Company. The Company cannot be heard to say that the director is not under its control and consequently it cannot compel him to obey the order of the Court to appear before it to answer material questions

relating to the suit. The consequences of the default have to be visited on the company and no one else as the director, not being a party to the suit, cannot be penalised in any manner for his disobedience of the order of the Court.

Petition for revision under Section 115, C.P.C., of the order of Shri Mahesh Chander, Sub-Judge, 1st Class, Delhi, dated 20th May, 1965, striking out the defence of defendant No. 1 and adjourning the case for 1st June, 1965 for further proceedings.

A. C. SEHGAL, ADVOCATE, for the Petitioner.

S. N. MARWAH AND P. D. BHARGAVA, ADVOCATES, for the Respondents.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—This is a rule at the instance of Messrs Ram Chand & Sons Sugar Mills (Private) Limited of Bara Banki, directed against the order of the Subordinate Judge, 1st Class, Delhi, striking off its defence under the provisions of section 151 of the Code of Civil Procedure.

A suit was brought by Kanhaya Lal Bhargava, the first respondent, as far back as 27th of April, 1962, for recovery of a sum of Rs. 45,112.94 Paise against the petitioner company and one Ram Sarup. It appears that the shareholders of the company are relations of each other and its registered office is in Bara Banki in the State of Uttar Pradesh. Apparently, this case has not progressed very far and is still in its preliminary stages. An application was filed by the plaintiff-respondent under Order 11, rule 21, read with Order 29, rule 3 of the Code of Civil Procedure, on 27th of October, 1964, in which it was prayed that the defence of the defendant-company be struck off or in the alternative Shri Jugal Kishore, permanent Director of the company, should appear in Court. Notice of this application was given to the counsel for the defendant company and he filed a reply on 23rd of November, 1964. An order was made on 3rd of December, 1964, that "as regards the request under Order 29, rule 3, for requiring Shri Jugal Kishore alleged permanent Director of the respondent-defendant in the Court to be present to answer material questions relating to this suit,I think it would be proper if Shri Jugal Kishore is directed to be present before this Court. Accordingly, defendant is directed to produce Shri Jugal Kishore in

the Court on the 14th of December, 1964." The counsel for the company stated on the next date of hearing that he had not been able to contact his client and another opportunity was given at his request to produce Jugal Kishore on 6th of January, 1965. A medical certificate was produced and a further date was fixed for the production of Jugal Kishore. On 18th of January, 1965, he was still stated to be ill and could not be produced on that date. A final opportunity was granted to the defendant-company through its counsel to produce Jugal Kishore on 3rd of February, 1965, on which date neither Jugal Kishore was present nor a medical certificate was produced. Still an adjournment was granted for 18th of February, 1965, when a telegram was received by the Court that a medical certificate was being sent. Thereafter the proceedings were adjourned to 22nd of February, 1965, when further extension was sought. On 25th of February, 1965, no medical certificate was produced and the petitioner was asked to show cause why its defence should not be struck off. The case was adjourned to 16th of March, 1965 and again to 1st of April, 1965, for arguments and Jugal Kishore was still absent. After hearing the arguments, the learned Judge struck off the defence of the petitioner under the provisions of section 151 of the Code of Civil Procedure and from this order, Messrs Ram Chand and Sons have come in revision to this Court.

Order 29 of the Code of Civil Procedure deals with suits by or against corporations, and under rule 3:—

"The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit."

That the Court has undoubted power to summon Jugal Kishore who is a Director of the company admits of no doubt, nor is there doubt on the question that there was a wilful disregard of the order of the Court, which seems to have been left with no other option but to adopt the drastic course which it has in striking off the defence of the recalcitrant defendant. It is well to remember that section 151 of the Code of Civil Procedure is very widely worded and to repeat its language :—

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court

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to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

For about four months Jugal Kishore did not appear in Court in spite of orders to this effect although the counsel for the company had undertaken to produce him. It is futile to argue, as has been done by the learned counsel for the petitioner before me, that it was not in its power to compel Jugal Kishore to appear in Court. Jugal Kishore is a Director of the company and is consequently under its control. The company cannot be heard to say that one of its Directors does not obey the orders of the Court. The consequences of the default have to be visited on the company and no one else. Jugal Kishore is not a party to the suit and he cannot be penalised in any manner.

The learned Judge has relied on the analogy of Order 10, rule 4, Order 3, rule 1 and Order 9, rule 12 of the Code of Civil Procedure. Under Order 10, rule 4, if the pleader of any party refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, the Court may call upon the party to appear in Court and may pronounce such order as it thinks fit. Under Order 3, rule 1, a party may appear in Court by a recognised agent or a pleader. Rule 12 of Order 9 says that:—

"Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear."

It is manifest that the consequences for non-production of Jugal Kishore have to be visited on no one else but the petitioner-company whose Director he admittedly is. No Court can have its lawful orders flouted with impunity. Jugal Kishore was bound to answer questions under the provisions of Order 29, rule 3. The provisions of section 151 of the Code of Civil Procedure, in my view, enable a Court to deal with a situation of this kind by

passing an order for striking out the defence. Reference may be made to *East Indian Railway Company v. Jit Mal Kallu Mal* (1), where a suit was adjourned at the instance of the defendant on the condition that the defendant paid the costs of the adjournment within a prescribed period and not having done so, it was held by Mukerji, J., that the Court was justified in striking off the defence and proceeding with the suit *ex parte*. It may be observed that the payment of costs may be enforced in other ways besides an order to strike out the defence of the intransigent party. It cannot, therefore, be argued, as has been done by Mr. Sehgal for the petitioner in this case, that the failure of the petitioner to produce Jugal Kishore could have been dealt with by a lighter penalty than the one which is involved in striking out the defence. That is really not the issue. The point to determine is whether the Court has acted in the exercise of its jurisdiction. The order may be harsh and somewhat drastic but that does not justify this Court in revision to interfere with it. In a Madras decision of *Venkatacharyulu v. Manchala Yesobu* (2), the Court ordered the defendant to deposit the amount in Court at the same time warning him that on failure to do so, his defence would be struck off and this order was upheld in revision by Sundaram Chetty, J., on the ground that the order was within the jurisdiction of the Court in the exercise of its inherent powers under section 151 although it was not the only order which the Court could pass under the circumstances of the case. Likewise, it cannot be acceptably urged in this case that the Court could have dealt with the petitioner in a manner different from the one it actually adopted. It is well to point out that in the original application on which the order has been made the prayer was that the defence should be struck off and in the order passed on the 25th of February, 1965, it was reiterated why the defence of defendant No. 1 should not be struck off. Thus, there was no element of surprise in the order passed by the learned Judge and even on the two opportunities provided on 16th of March and 1st of April, 1965, the petitioner-company did not care to put in Jugal Kishore. Even now when I put it to the counsel for the petitioner that Jugal Kishore may be produced on an early date before the Court below, he demurred on the ground that it was not within

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(1) I.L.R. 47 All. 638.

(2) A.I.R. 1932 Mad. 263.

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the power of the company to compel its Director to appear in Court. In the circumstances, I am of the opinion that the Court resorted to the right measure in dealing with the situation with which it was confronted. It was observed by a Division Bench of Somayya and Rajamannar, JJ., in *Ramayya Servai v. Sama Ayyar* (3), that it is very doubtful whether section 151 would apply to a case where the defence was struck off under the provisions of Order 11, rule 21, which deals with non-compliance with the order for discovery. The ruling of this decision, however, cannot be construed to mean that the Court in the exercise of its jurisdiction under section 151 is devoid of the power to make an order for striking out the defence in suitable cases. Moreover, the exercise of jurisdiction under section 115 of the Code of Civil Procedure is discretionary and the High Court is not bound to interfere merely because the order passed by the subordinate Court is erroneous.

I would, therefore, dismiss this petition for revision with costs.

LETTERS PATENT APPEAL

Before D. Falshaw, Chief Justice and Mehar Singh, J.

HIRA SINGH AND OTHERS,—Appellants

versus

MST. GAURAN AND OTHERS,—Respondents

Letters Patent Appeal No. 127 of 1961.

1965

August, 30th

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 7—Suit for ejectment filed by landlord against tenant on ground of non-payment of rent in 1955—Amendment adding proviso to S. 7 coming into force in 1956 and the suit decided by Assistant Collector in 1958—Tenant—Whether entitled to the benefit of the proviso.

Held, that the proviso to section 7 of the Pepsu Tenancy and Agricultural Lands Act, 1955, which was added in 1956 was applicable to the suit filed by a landlord against his tenant for ejectment on the ground of non-payment of rent and the tenant was entitled to its benefit. After the date on which the proviso came into force, no tenant could be ejected in proceedings based on non-payment of rent unless and until the amount due on account of rent had been determined by the court and the tenant had been allowed six months from the date of such determination to pay the arrears, and the proviso was certainly applicable to pending cases.

(3) A.I.R. 1947 Mad. 92.