Before V.S. Aggarwal, J

PAWAN KUMAR & OTHERS,—*Petitioners*

versus

KIRAN & HEMA & OTHERS,—*Respondents*

C.R. No. 3953 of 1998

23rd April, 1999

Code of Civil Procedure, 1908—Order 7 R l. 10-A—Written statement to the plaint filed—Court having no territorial jurisdiction—Plaint ordered to be returned—Plaint sent to the Court having jurisdiction—Defendant seeking leave to file fresh written statement—Has defendant a right to file a fresh written statement.

Held that once the plaint is returned, the defendant has a right to file a fresh written statement. This is for the reason that it is fresh presentation of the plaint and it is not continuation of the earlier suit.

(Para 11)

C.B. Goel, Advocate, *for the Petitioners.*

Rakesh Nagpal, Advocate, *for the Respondents.*

JUDGMENT

V. S. Aggarwal, J.

(1) This is a revision petition filed by Pawan Kumar Sethi and others, hereinafter described as "the petitioners" directed against the order passed by the learned Additional Civil Judge (Senior Division), Pehowa, dated 15th June, 1998. By virtue of the impugned order, the learned trial Court had rejected the request of the petitioners seeking permission to file a fresh written statement. It was further observed that the petitioners may get clarification from this Court in this context.

(2) The relevent facts are that the respondents had filed a petition for grant of maintenance under the Hindu Adoption and Maintenance Act (for short "the Act"). It was filed in the Court of District Judge, Kurukshetra. The petitioners contested the same and one of the grounds taken up was that the Court at Kurukshetra

had no jurisdiction to try and hear the petition. On 19th April, 1995, the learned Additional District Judge, Kurukshetra, had passed the following order :—

> "Heard. Realizing the fate that the petition ought to have been filed in the court of Sub Judge 1st Class at Pehowa, Mr. Adlakha has moved an application under Order VII Rule 10-A C.P.C. for return of petition and for directing the parties to appear in the Court of Sub Judge 1st Class at Pehowa. This prayer has not been opposed by the opposite side. So, it is held that the Court of Sub Judge 1st Class, Pehowa, is the competent Court and has jurisdiction to try this petition. The petition is ordered to be returned. On the request of counsel, it is directed that the petition be sent by post to the Court of Sub Judge 1st Class, Pehowa. The papers i.e. the order sheet is ordered to be consigned to the record room, and the file be sent to the Court of Sub Judge 1st Class at Pehowa. Parties are directed to appear there on 4th May, 1995".

(3) The petitioners submitted an application in the Civil Court at Pehowa seeking permission to file a fresh written statement. It was asserted that the plaint has been presented at Pehowa. The written statement already on the record which was filed in the Court at Kurukshetra cannot be treated as the written statement. The petitioners have a valuable right to file a fresh written statement.

(4) The application was contested and it was pointed out that whole of the file has been sent by the Court of learned Additional District Judge, Kurukshetra to Pehowa and, therefore, the petitioners do not have a right to file a fresh written statement.

(5) The learned trial Court considered the submissions and held that against the maintenance order this Court had already decided the revision petition. The maintenance is being paid as fixed by this Court on 8th August, 1996. The trial Court was of the opinion that if at this stage additional written statement is allowed to be filed, it will have affect on the maintenance fixed by this Court and accordingly the application was not allowed.

(6) Aggrieved by the said order present revision petition has been filed.

(7) The learned counsel for the petitioners urged and vehemently argued that when the plaint has been returned it has

only to be presented in the Court of competent jurisdiction and the file as such could not be sent to Pehowa. Once the plaint has been returned, on it being presented the petitioners have a right to file a fresh written statement. Order 7 Rule 10 of the Code of Civil Procedure (for short "the Code") prescribes the procedure and it reads as under:—

> "10. Return of plaint—(1) [Subject to the provisions of Rule 10-A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.
>
> [*Explanation* :—For the removal of doubts, it is herby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule].
>
> (2) Procedure on returning plaint—On returning a plaint the Judge shall endorse thereon, the date of its presentation and return the name of the parties presenting it, and a brief statement of the reasons for returning it."

(8) A perusal of the aforesaid provision shows that when the plaint is returned to be presented to the Court in which the suit should have been instituted, then the Judge shall endorse thereon the date of its presentation and its return and brief reasons for returning it. The Court has the power to fix a date for appearance in the Court where the plaint is to be filed after its return. Order 7 Rule 10-A of the Code gives the procedure in detail which reads as under :—

> "10-A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return :—(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should not be returned, it shall, before doing so, intimate its decision to the plaintiff.
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> (2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court :—
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> (a) Specifying the Court in which he proposes to present the plaint after its return,
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> (b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit, —

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) its shall not be necessary for the Court in which the plaint is prescribed after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint."

(9) The purpose of Order 7 Rule 10-A of the Code is to avoid the delay. The Court can intimate its decision to the plaintiff who can make an application to the Court specifying the Court to which he proposes to present the plaint. The Court can fix a date for the appearance of the parties in the other Court. In this process, notice is given to both the parties. When the plaint is presented to the Court of competent jurisdiction, it is necessary for that Court to issue a fresh notice.

(10) In the present case, learned Additional District Judge at Kurukshetra did direct the parties to appear at Pehowa but, in fact, directed all the papers and order sheet to be sent to that Court and that too by post. It included the written statement.

(11) There can be no controversy that once the plaint is returned, the defendant gets a right to file a fresh written statement. This is for the reason that it is fresh presentation of the plaint and it is not continuation of the earlier suit. In this connection, reference can well be made to the decision in the case of *Amar Chand Inani* vs. *Union of India,* (1). A similar argument was advanced as is being said by the respondents. It was held that it was not continuation of the suit and it is deemed to be a fresh presentation of the suit. The Supreme Court held as under :—

> ".....It was, however, argued by counsel for the appellant that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and , therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial Court. We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words the suit instituted in the trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in Hirachand Succaram Gandhy v. G.I.P. Rly. Co., AIR 1928 Bom 421, Bimla Prasad Mukerji v. Lal Moni Devi, AIR 1926 Cal 355, and Ram Kishun v. Ashirbad, ILR 29 Pat 699=(AIR 1950 Pat 478). Therefore, the presentation of the plaint in the Karnal Court on 2nd March, 1959, cannot be deemed to be a presentation of it on that day in the trial Court."

(12) Same view has prevailed in the recent judgment of the Supreme Court in the case of *Hanamanthappa and another* vs. *Chandrashekharappa and others,* (2). Herein, a civil suit had been filed. The plaint was returned for presentation to the proper Court. The plaintiff after making necessary amendment in the plaint re-presented the plaint. The defendant took up the plea that amendment could not be made in the plaint. The Supreme Court

(1) A.I.R. 1973 S.C. 313
(2) A.I.R. 1997 S.C. 1307

held that it is a fresh plaint and amendment could be made and the plaint presented. In paragraph 3 of the judgement, Supreme Court held as under :—

> ".....In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee as had rightly been pointed out by the High Court. Therefore it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint presented before the Court of District Munsiff, Navalgund. It is not always necessary for the plaintiff to seek amendment of the plaint under Order VI, Rule 17 C.P.C. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law. Under those circumstances, we do not think that there is any error of law committed by the High Court in giving the above direction."

(13) Vice versa would also be true when fresh plaint is presented. The petitioners did have the right to file a fresh written statement. This is so because it was a plaint that was to be presented afresh at Pehowa.

(14) On behalf of the respondents, it was, however, urged that against the order of grant of interim maintenance a revision petition had been filed in this Court. It was decided on 8th August, 1996. Interim maintenance has been allowed. According to the learned counsel, therefore, one cannot set aside that order.

(15) Indeed, at this stage, this question is irrelevant. After the plaint was re-presented, the petitioners submitted an application in the court of Pehowa praying for permission to file a fresh written statement. It was filed on 26th September, 1995. It was decided by the learned trial Court on 15th June, 1998. Thus, the right had not been waived. If any interim order was passed that has no reflection on the written statement already on the file. Accordingly, once the petitioners had the right and that had not been waived, it would be taken merely because the interim order for maintenance has been passed.

(16) Yet another argument advanced was that the petitioners even had challenged that order passed by this Court fixing the maintenance in the Supreme Court. The order has merged into the order of the Supreme Court and this Court cannot review the same.

Reliance was placed on the decision rendered in the case of *The Sree Narayana Dharma Sangam Trust* vs. *Swami Prakasananda & Ors. (3)*. There is not dispute with the said proposition. But herein, the said order is not being set aside. Only fresh written statement is permitted to be filed which was the right of the petitioners and had not been waived. The said decision will not come to the rescue of the respondents.

(17) For these reasons, the revision petition is accepted and the impugned order is set aside. The petitioners are allowed to file their written statement to the plaint that has been re-presented.

S.C.K.

Before V. S. Aggarwal, J

RANJIT SINGH,—*Petitioner*

versus

GURNAM SINGH & ANOTHER,—*Respondents*

C.R. No. 674 of 1998

22nd September, 1998

Code of Civil Procedure, 1908—Order 9 R1.8—Once suit dismissed under order 9, rule 8—Plaintiff debarred from bringing a fresh suit in respect of same cause of action—Provisions are mandatory.

Held that if there is a continuous cause of action, then second suit would not be barred. Otherwise, with respect to the earlier cause of action a second suit is barred, if the earlier suit had been dismissed under order 9, rule 8 of the Code. Of course, it is not a decision on merit and will not operate as *res judicata* but filing of suit will not be permissible.

(Para 13)

Code of Civil procedure, 1908—Order 9, R1. 8—Earlier suit for injunction— If second suit also for injunction on similar threat then subsequent suit will not be barred.

Held that the earlier suit was for injunction also. Seeking of an injunction, indeed, is a continuous cause. If similar threat comes

(3) J.T. 1997 (5) S.C. 100