

Amarjit Singh v. Saroj Malik (Pandit, J.)

is sufficient cause for giving him permission to file a fresh suit on the same cause of action. The injury caused to the defendant can very well be compensated by costs."

(7) After having observed this, the learned Judge accepted the application filed by the plaintiff, and permitted him to institute a fresh suit on the same cause of action on payment of Rs. 20 as costs. Simply because the plaintiff did not produce some evidence in support of his case, does not afford a ground to him to move an application under Order 23, rule 1, Code of Civil Procedure, praying for the withdrawal of the suit with permission to file a fresh one on the same cause of action. In order to succeed, the plaintiff had to bring his case within the four corners of the provisions of Order 23, rule 1, Code of Civil Procedure. The learned Judge, it appears, had not applied his mind to the said provisions.

(8) The revision petition is, accordingly, accepted and the impugned order quashed. Since the respondents are not represented before me; there will be no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

AMARJIT SINGH—Petitioner.

versus

SAROJ MALIK—Respondent.

Civil Revision No. 1239 of 1970.

April 7, 1971.

Arbitration Act (X of 1940)—Section 34—"A step in the proceedings in the suit."—Meaning of—Request by the defendant for adjournment to file written statement—Whether amounts to such a step—Code of Civil Procedure (Act V of 1908)—Order 5, Rule 2—Defendant served by substituted service by citation in a news-paper—Whether sufficient compliance with Order 5, Rule 2.

Held, that it is not possible to give an exact definition of what is meant by "a step in the proceedings in the suit" in section 34 of the Arbitration Act. It will depend on the circumstances of each case. What has to be kept in mind is that if the defendant knows what the case against him is and with that knowledge, he asks for an adjournment to file a written statement in the suit, than it can reasonably be inferred that it would be "a step in the proceedings in the suit". (Para 9).

Held, that Order 5, rule 2 of Code of Civil Procedure says that every summons shall be accompanied by a copy of the plaint or if so permitted, by a concise statement. This provision contemplates a situation, where a copy of the plaint need not necessarily be given to the defendant. It would be enough if a concise statement of the facts was supplied to him. Where a defendant is being served by substituted service by means of a citation in the news-paper, then it can legitimately be assumed that the entire plaint would not be published in the paper and if a concise statement thereof was given therein, that would be enough for the purposes of Order 5, rule 2, Civil Procedure Code. (Para 9).

Petition u/s 115 C.P.C. for revision of the order of the court of Shri Joginder Singh Mander District Judge, Chandigarh dated 4th November, 1970 affirming that of Shri K. D. Mohan, Senior Sub Judge, Chandigarh dated 7th July, 1970, dismissing the petition.

MOHINDER JIT SINGH SETHI, ADVOCATE, for the petitioner.

R. K. AGGARWAL, ADVOCATE WITH K. R. MAHAJAN, ADVOCATE, for the respondent.

JUDGMENT

PANDIT, J.—Shrimati Saroj Malik filed a suit against Amarjit Singh for his ejection from Booth No. 55, Sector 19-C, Chandigarh. Amarjit Singh moved a petition under section 34 of the Arbitration Act, 1940, praying that the proceedings in the suit be stayed, because there was an agreement between him and Shrimati Shakuntla Rani, the previous owner of this property, that such a matter would be referred to arbitration. Saroj Malik had purchased the property from Shakuntla Rani and, therefore, she was bound by that agreement.

(2) This petition was contested by Saroj Malik saying that the defendant had taken steps in the proceedings in the suit before he filed the petition under section 34 of the Arbitration Act and, therefore, the suit could not be stayed.

(3) A preliminary issue was framed to the effect—"Whether the defendant-applicant had taken steps in the proceedings in the suit before filing this petition; if so its effect?"

(4) Both the Senior Subordinate Judge and the learned District Judge, Chandigarh, have found this issue in favour of Saroj Malik and dismissed the defendant's petition under section 34 of the Arbitration Act. The defendant has come here in revision.

(5) The facts are not in dispute. Summons in the suit were issued to the defendant first for 17th March, 1970. But since no service was effected for that date on him, the plaintiff moved an application under Order 5, rule 20, Civil Procedure Code, that the defendant be served by substituted service. Substituted service for 16th April, 1970, was then effected on the defendant by citation in a local newspaper, Mail Milap by name. The citation appeared in the paper, dated 13th April, 1970. It is the case of the petitioner that 14th and 15th April, 1970, were holidays and the Court was closed on these two days. The petitioner appeared with his counsel before the trial Judge on 16th April, 1970, the date fixed in the case, and requested for an adjournment for filing a written statement. The case was adjourned for this purpose to 21st April, 1970. On that date, instead of filing the written statement, the petitioner moved the petition under section 34 of the Arbitration Act. As already mentioned above, this petition was dismissed by both the Senior Subordinate Judge and the learned District Judge and the only question for decision in this case is whether in the circumstances of this case the request for an adjournment by the counsel for the petitioner on 16th April, 1970, for filing a written statement was "a step in the proceedings in the suit" within the meaning of this expression in section 34 of the Arbitration Act.

(6) Learned counsel urged that the petitioner was not supplied with a copy of the plaint and, therefore, his counsel asked for an adjournment. It was not a conscious act on his part for getting an adjournment for filing a written statement, but it was a sort of routine request so that he might know the nature of the suit against him and then take appropriate proceedings on the next date fixed in the case. In support of his submission, counsel referred to a number of authorities; for example, *Messrs Prem Nath-Pran Nath v. Amba*

Parshad (1), Punjab State v. Moji Ram (2), and Nuruddin Abdulhusein v. Abu Ahmed Abdul Jalli (3).

(7) Counsel for the respondent, on the other hand, also referred to *Daulat Ram-Rala Ram v. State of Punjab (4)*, *Abdul Quddoos Dost Mohammad Momin and another v. Abdul Gani Abdul Rahman and another (5)*, and *The Karnani Industrial Bank Ltd. v. Satya Niranjana Shaw and others (6)*, for the view that a prayer for adjournment to put in a written statement was "a step in the proceedings in the suit."

(8) It is not necessary to discuss the rulings relied upon by the counsel for the parties, because they are all distinguishable on facts and have no application to the instant case.

(9) In the present case, it is common ground that a registered notice had been issued to the petitioner by the plaintiff-respondent before instituting this suit. In Chandigarh, since the East Punjab Urban Rent Restriction Act is not applicable; no ground of ejection had to be mentioned. All that was needed was that the tenancy had to be terminated by giving a proper notice under section 106 of the Transfer of Property Act and the registered notice was one under the said section. The citation that appeared in the local paper, *Mail Milap*, showed that a suit for ejection from Booth No. 55 and also for the recovery of Rs. 95 by way of rent was brought against the petitioner by Saroj Malik. From these facts, one can reasonably come to the conclusion that the petitioner knew the nature of the suit that had been filed by the respondent. This apart, when he appeared in Court, along with his counsel on 16th April, 1970, he did not ask for a copy of the plaint from the plaintiff, presumably because he knew

(1) A.I.R. 1941 Lahore 64.

(2) A.I.R. 1957 Punjab 223.

(3) A.I.R. 1950 Bom. 127.

(4) A.I.R. 1958 Punjab 19.

(5) A.I.R. 1954 Nag. 332.

(6) A.I.R. 1924 Cal. 789.

what the suit was about. As I have already said, in Chandigarh, the tenant has not to bother about the grounds for ejection, since the Rent Restriction Act is not applicable to this place. Taking all these facts into consideration, therefore, his counsel asked for an adjournment of the case for filing the written statement. Then obviously it could not be said that he merely wanted to know what the case was against his client so that he might take appropriate proceedings on the next date of hearing for which he claimed an adjournment. Order 5, rule 2, Civil Procedure Code, says that every summons shall be accompanied by a copy of the plaint or if so permitted, by a concise statement. This provision contemplates a situation where a copy of the plaint need not necessarily be given to the defendant. It would be enough if a concise statement of the facts was supplied to him. When the petitioner, in the instant case, was being served by substituted service by means of a citation in the newspaper, then it could legitimately be assumed that the entire plaint would not be published in the paper and if a concise statement thereof was given therein, that would be enough for the purposes of Order 5, rule 2, Civil Procedure Code. It is perhaps for a situation of this kind that it could be said that a concise statement of the plaint would be sufficient. It is not possible to give an exact definition of what is meant by "a step in the proceedings in the suit" in section 34 of the Arbitration Act. It will depend on the circumstances of each case. What has to be kept in mind is that if the defendant knows what the case against him is and with that knowledge, he asks for an adjournment to file a written statement in the suit, then it can reasonably be inferred that it would be "a step in the proceedings in the suit". It was, as a matter of fact, admitted by the learned counsel that if the original summons that had been served on the petitioner, had been accompanied by a copy of the plaint and after that he had asked for an adjournment in the case for filing a written statement, that would have been "a step in the proceedings in the suit". The main argument raised was that the petitioner was ignorant of the nature of the case against him, since no copy of the plaint had been given to him. But, as I have already said, in the circumstances of this case, it cannot be said that the petitioner was not aware as to what the suit was that had been filed against him. That being so, I would hold that in this case the asking for an adjournment by the petitioner's counsel for filing a written statement was "a step in the proceedings in the suit". The Courts below, in my opinion, have given a correct judgment, which is in accordance with law.

(10) The result is that this petition fails and is dismissed; but taking into consideration the facts of this case; I leave the parties to bear their own costs.

K. S. K.