

Simplex Hosiery Factory and another v. Chanchal Kumari etc.
(S. P. Goyal, J.)

14. In the light of the foregoing discussion I must conclude that the minimal period of one year's service visualised by the Presidential Order is one preceding the crucial date of the 31st of March, 1977 except for breaks condonable thereunder. The answer to the question posed at the out-set is, therefore, rendered in the affirmative.

15. As a necessary consequence of the above, both the Writ Petitions, are without merit and are hereby dismissed with costs.

G. C. Mital, J.—I agree.

N.K.S.

Before S. P. Goyal, J.

SIMPLEX HOSIERY FACTORY and another,—Petitioners.

versus

CHANCHAL KUMARI ETC.,—Respondents.

Civil Revision No. 2 of 1979

May 25, 1979.

Code of Civil Procedure (V of 1908)—Order 14 Rules 1, 2 & 5 and Order 15 Rule 3—Relative scope of—Power under rule 3 of Order 15—Whether can be exercised at a stage subsequent to the framing of issues.

Held, that sub-rule (5) of rule 14 enjoins upon the court to frame all the issues, whether they be of fact or law, arising from the pleadings of the parties and the court can postpone the framing of all the issues only where the provisions of rule 2(2) are attracted and the suit can be disposed of on purely issue of law which does not require the leading of any evidence by the parties for its disposal. If no such issue of law on which the suit can be disposed of arises from the pleadings of the parties, the Court has no discretion in the matter and has to frame all the issues arising from the pleadings of the

parties, whether of fact or of law. Then comes into play the provisions of Order 15 which also deal with the situation arising on the first date of the hearing. Rule 1 provides that where the parties are not at issue on any question of law or fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants. If neither the provisions of Rule 2 of Order 14 nor of Rules 1 and 2 of Order 15 are attracted and all the issues have been framed under Order 14. Rule 1(5), still the Court can proceed and decide the suit on the first date of the hearing, if the situation as envisaged in Rule 3 of Order 15 arises. There can be, therefore, no manner of doubt that the provisions of rule 3 can be invoked only on the date of the first hearing of the suit when the issues are framed and the Court is satisfied that the suit can be disposed of on some issue of fact or law on which the parties can at once adduce the evidence. Once the first date of hearing has passed and the parties have started leading their evidence, the Court has no jurisdiction to invoke the provisions of Order 15 Rule 3 and proceed to decide some of the issues only even though the decision on those issues may enable the Court to dispose of the suit finally. The words, "where the summons has been issued for the settlement of issues only or for the final disposal of the suit" in Rule 3 clearly show that its provisions can be invoked only on the date when the case is taken up for framing the issues, though a stage for invoking its provisions arises only when the issues have already been framed under Order 14 Rule 1(5). The proviso to this rule lays down that where summons has been issued for settlement of issues only, action can be taken if no objection is raised by the parties or their counsel. Again, the Court cannot proceed to decide any issue which may be sufficient for the decision of the suit unless the Court is satisfied that further argument or evidence than the parties can adduce at once is required for the decision of such issue. These requirements also point out that the provisions of Rule 3 of Order 15 can be invoked only soon after the framing of the issues but before the suit is adjourned for the evidence of the parties. (Paras 3, 4 and 5).

S. Ramakrishna Pillai v. Krishanaswami Pillai, A.I.R. 1922 Madras 321.
Lachmi Narain Singh and others v. Rup Narain and others, A.I.R. 1921
 Patl. 467 DISSENTED FROM.

Petition under section 115(b) of C.P.C. from the order of Shri P. K. Garg, PCS, Senior Subordinate Judge, Ludhiana dated 22nd December, 1978 dismissing the application.

Bhagirath Dass, Advocate with S. K. Hirajee and B. K. Gupta,
 Advocates, for the Petitioner.

Ujjagar Singh, Advocate, for the Respondent.

Simplex Hosiery Factory and another v. Chanchal Kumari etc.
(S. P. Goyal, J.)

JUDGMENT

S. P. Goyal, J.

(1) This judgment will dispose of two petitions (Civil Revision Nos. 2 and 385 of 1979) as they involve a common question of law. For the purpose of this case facts in Civil Revision No. 2 of 1979 have been noticed.

(2) Smt. Chanchal Kumari, respondent, filed a suit against the petitioners for realization of Rs 83,056 which was contested by the defendant-petitioners. A number of issues were framed and one of the issues framed was that of limitation. After Smt. Chanchal Kumari, plaintiff, had closed her evidence and the suit was fixed for evidence of the defendants, an application was moved by the latter that the issue of limitation alone may be decided first as the defendants were not to lead any evidence on that issue. This application was declined by the trial Court,—*vide* order dated December 22, 1978. Dissatisfied with that order, the defendants have filed the present petition.

(3) From the perusal of the impugned order it appears that in the trial Court, the application was moved under Order 14, rule 2, C.P.C. but before me Mr. Bhagirath Dass, the learned counsel for the petitioners, relied on the provisions of Order 15, rule 3, Code of Civil Procedure, in support of the application. The said rule 3 provides that where the parties are at issue on some question of law or fact and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce, is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit: provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects. Though from the plain reading of this rule, it appears that its provisions can be invoked only on the first date of the hearing when the issues are settled but there appears to be some conflict in the various High Courts on the question as to whether its provisions can be

invoked also at some later stage of the suit. But before referring to those decisions, a comparison between Order 14, rules 1 and 2 and this rule would be helpful in understanding its true import. Under sub-rule (5) of rule 1 of Order 14, at the first date of hearing of the suit the Court, after reading the plaint and the written statement and the statements recorded under rule 2 of Order 10 is required to ascertain upon what material propositions of fact or of law the parties are at variance and thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. Rule 2 lays down that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall pronounce judgment on all issues subject to the provisions of sub-rule (2) which provides that where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. It is, therefore, evident that sub-rule (5) enjoins upon the Court to frame all the issues where issue of fact or law arise from the pleadings of the parties and the Court can postpone the framing of all the issues only where the provisions of rule 2(2) are attracted and the suit can be disposed of on purely issue of law which does not require the leading of any evidence by the parties for its disposal. If no such issue of law on which the suit can be disposed of arises from the pleadings of the parties, the Court has no discretion in the matter and has to frame all the issues arising from the pleadings of the parties, whether of fact or of law. Then comes into play the provisions of Order 15 which also deal with the situation arising on the first date of the hearing. Rule 1 provides that where the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment. Where there are more than one defendants, rule 2 provides that if any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants. If neither the provisions of rule 2 of Order 14 nor of rules 1 and 2 of Order 15 are attracted and all the issues have been framed under Order 14, rule 1(5), still the Court can proceed and decide the suit on the first date of the hearing if the situation as envisaged in rule 3 of Order 15 arises. There can be, therefore, no

Simplex Hosiery Factory and another v. Chanchal Kumari etc.
(S. P. Goyal, J.)

manner of doubt that the provisions of rule 3 can be invoked only on the date of the first hearing of the suit when the issues are framed and the Court is satisfied that the suit can be disposed of on some issue of fact or law on which the parties can at once adduce the evidence.

(4) The view expressed above finds support from the two Division Bench decisions of the Calcutta High Court in *Yatindra Nath Chaudhury and another v. Hari Charan Chaudhuri* (1) and *Debendra Narain Roy v. Jogendra Narain Dtb and others* (2) and Single Bench decision of Allahabad High Court in *M/s. Estrela Batteries Ltd., v. M/s Modi Industries Ltd.* (3). Somewhat contrary view appears to have been taken in the Single Bench decision of the Madras High Court is *S. Ramakrishna Pillai v. Krishnaswami Pillai* (4) and a Division Bench decision of Patna High Court in *Lachmi Narain Singh and others v. Rup Narain and others* (5). No doubt, in *Ramakrishna Pillai's case* (supra), the learned Judge observed that in his opinion there was no reason to confine the application of Order 15 rule 3 to try certain issues to the first date of hearing, but on the facts of that case it was held that the first hearing had not taken place when the application under Order 15, rule 3 had been made and the case was still at the issue stage. So the observations made were more or less in the nature of *obiter dicta*. In *Lachmi Narain Singh's case* (supra), Das, J. who spoke for the Bench observed:

“In my opinion both Order XIV, rule 2 and Order XV, rule 3 give ample power to the Subordinate Judge to try issues of law first. It is quite true that the power under Order XIV, rule 2 can be exercised at the stage which may be conveniently described as the issue stage but Order XV, rule 3 gives power to the Subordinate Judges to proceed to determine the issues of law at a stage subsequent to the issue stage. Speaking entirely for myself, I think it is far better that the Subordinate Courts should not try any case piecemeal, but that is a matter which is for the Subordinate Judges to decide.”

-
- (1) A.I.R. 1915 Calcutta 87.
 - (2) A.I.R. 1933 Calcutta 559.
 - (3) A.I.R. 1976 All. 201.
 - (4) A.I.R. 1922 Madras 321.
 - (5) A.I.R. 1921 Pat 467.

No doubt, it has been said in this case that the provisions of Order 15, rule 3 give power to the trial Court to determine all issues of law at a stage subsequent to the issue stage but from the facts it is evident that the parties had not started leading their evidence when the application under Order 15, rule 3 was moved. While distinguishing the decision of that very Court and that of the Calcutta High Court, it was observed that in those cases evidence had been recorded and the trial had proceeded whereas in the case in hand, no evidence had been led as yet and therefore, the hearing of the suit had not commenced. It is, therefore, evident that in both the said cases, the Court actually proceeded on the ground that the hearing in the suit had not commenced and the suit had not passed beyond the stage of the first date of hearing. There is, thus, no serious conflict between the Madras and Patna High Courts on the one hand and the Calcutta and Allahabad High Courts on the other and the view is unanimous that once the first date of hearing has passed and the parties have started leading their evidence, the Court has no jurisdiction to invoke the provisions of Order 15, rule 3 and proceed to decide some of the issues only even though the decision on those issues may enable the Court to dispose of the suit finally.

(5) However, a conflict does exist between the Calcutta and Allahabad High Courts on the one hand and Madras and Patna High Courts on the other in a limited sense inasmuch as according to one view the provisions of Order 15, rule 3 can be invoked only on the date when the case is taken up by the Court for framing of the issues while according to the other view action can be taken under the said rule even on the date subsequent to the date on which the issues are framed provided the parties have not started leading their evidence. After a careful perusal of the provisions of the said rule 3, I am of the opinion that the view taken by the Calcutta and Allahabad High Courts is the correct view. The words, "where the summons has been issued for the settlement of issues only or for the final disposal of the suit" in rule 3 clearly show that its provisions can be invoked on the date when the case is taken up for framing the issues, though a stage for invoking its provisions arises only when the issues have already been framed under Order 14, rule 1(5). This view is further strengthened by the proviso to this rule which lays down that where summons has been issued for settlement of issues only, action can be taken if no objection is raised by the parties or their counsel. Again the Court cannot proceed to decide any issue which may be sufficient for the decision of the suit unless the Court is satisfied that no further

Madan Lal and another v. State of Punjab and another
(S. S. Sandhawalia, C.J.)

argument or evidence than the parties can adduce at once is required for the decision of such issue. This requirement also points out that the provisions of the said rule 3 can be invoked only soon after the framing of the issues but before the suit is adjourned for the evidence of the parties.

(6) In view of the above discussion, I find no merit in these petitions and the same are hereby dismissed but without any order as to costs. The parties, through their counsel, have been directed to appear in the trial Court on July 23, 1979.

S.C.K.

Before S. S. Sandhawalia, C.J. and G. C. Mittal, J.

MADAN LAL and another,—Petitioner.

versus

STATE OF PUNJAB and another,—Respondents.

Civil Writ No. 1447 of 1976.

July 2, 1979.

Punjab Urban Estates (Development and Regulation) Act (22 of 1964)—Sections 2(i) & (j) and 3(2)—Punjab Urban Estates (Sales of Sites) Rules 1965—Rules 3, 5(3) and 7—Allotment of Plots in an Urban Estate—Applications invited—Applicants depositing tentative price in accordance with the advertisement assured allotment—Government subsequently changing policy making only smaller plots available for allotment—Applicants—Whether entitled to allotment and possession of plots of the size applied for—Rule of promissory estoppel—Whether applicable.

Held, that rule 3 of the Punjab Urban Estates (Sales of Sites) Rules, 1965 clearly indicates that two modes are provided for the transfer of sites and these are by auction or allotment. So far as the right to the allotment of a plot is concerned it is evident that the primary statutory provision from which it can possibly flow is sub-rule (3) which on its plain language, prescribes that the State Government may allot a site of the size applied for provided all other conditions are satisfied. Herein, there is neither a mandate nor any obligatory public duty cast upon the State Government to do so