

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 05<sup>TH</sup> DAY OF April 2004

PRESENT

THE HON'BLE MR. N K JAIN, CHIEF JUSTICE  
AND

THE HON'BLE MR. JUSTICE V.G.SABHAHIT

CRP No 3280/2001 c/w 3279/2001(SC)

BETWEEN :

RABIYA BI KASSIM M  
AGE:52 YRS,  
W/O ALTE M KASSIM,  
NO.183, RABIYA MANSION 1ST FLOOR,  
4TH CROSS,  
KHADAR SHARIFF GARDEN,  
BANGLAORE 27.

... PETITIONER

(By Sri : MUSHTAQ AHMED)

AND :

THE COUNTRY WIDE CONSUMER FINANCIAL SERVICE LTD  
NO.4, PRIME BUSINESS CENTRE  
SRI KRISHNA TEMPLE ROAD,  
INDIRANAGAR,  
BANGLAORE 560 038  
REPRESENTED BY MR. SHAMEER  
POWER OF ATTORNEY HOLDER

... RESPONDENT

(By Sri : M V KINI AND CO. )

(Parties common in both the cases)

CRP's FILED U/S.18 OF THE KSCC ACT AGAINST THE ORDER  
DT:28.7.01 PASSED ON IA NO.3 & 5 IN SC NO.18287/99 ON THE FILE OF  
THE XVII ADDL. JUDGE, COURT OF SMALL CAUSES, BANGALORE,  
ALLOWING IA NO.III FILED U/S.151 CPC AND IA NO.V FILED U/O XVIII RR 1  
AND 2 R/W.SEC.151 CPC.

These Petitions coming on for orders this day, the CHIEF JUSTICE  
made the following :

ORDER

ORDER

The learned single Judge has referred this matter to the Division bench vide order dated 8.10.2001 in view of the conflicting decisions reported in ILR 1996 KAR 553 (*Sujatha Vs. Indian Bank*) following the decision of the Supreme Court reported in AIR 1964 SC 993 and the subsequent decisions reported in ILR 2000 KAR 820, and ILR 2000 KAR 2713. As per the directions dated 10.2.2004, the matter has come up before us.

2. The necessary facts are that the respondent plaintiff filed a suit against the petitioner-defendant for a judgment and decree for a sum of Rs.19,562.82 together with interest at 21% per annum. The arguments were heard finally on 12.6.2001. The case was posted on 20.6.2001 for judgment. On 18.6.2001, the respondents filed I.A.No.3 under Section 151 of Civil Procedure Code, 1908 (for short 'CPC') seeking to recall the order dated 30.5.2001 and to re-open the plaintiff's side to lead further evidence afresh. Another application I.A.No.5 was filed under Order 18 Rule 1 and 2 and u/s.151 of CPC seeking permission for the plaintiff's representative to lead further evidence. The XVII Additional Small Causes Judge, Mayo Hall Unit, Bangalore allowed the applications by a common order dated 28.7.2001. Against that a revision petition was filed on 16.8.2001. On 7.9.2001 notice was issued with stay till next date of hearing on 19.9.2001. The matter was adjourned to 8.10.2001. Now the matter has been referred to and placed before us as stated.

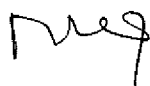
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3. The learned counsel appearing for the respondent-plaintiff submits that even when the case is posted for judgment an application for reopening the case is maintainable, which is clear from the Amendment Act which came into force in 1976 wherein clause (4) of Order 18 Rule 2 introduced reads as follows:

“(4) Notwithstanding anything contained in this Rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage”.

The learned counsel submits that the position is clear as per the decision in *LAXMINARAYAN ENTERPRISES vs. LAXMINARAYAN TEXTILE* (ILR 2000 KAR. 820).

4. On the other hand, the learned counsel for the petitioner-defendant submits no evidence can be recorded when the case is reserved for pronouncement of judgment in view of the decision of the Supreme Court in *Arjun Sing Vs. Mohindra Kumar* (AIR 1964 SC 993) wherein it is held that once the matter has been finally heard and posted for judgment, the Court has only to pronounce the judgment, and therefore, the decision of the learned single Judge in the case of *Laxminarayan Enterprises supra*, that the application can be filed at any stage of the proceedings even after the learned Judge has reserved the matter for pronouncing the judgment is not correct. He also submits that the Trial Court has erred in distinguishing the decision of the Supreme Court in *Arjun Sing's* case (*supra*). He also submits that clause (4) of Order 18 Rule 2 has been deleted,



which clearly shows that it is not the intention of the Legislature to permit filing of the interlocutory application, even after the arguments are heard and the matter is reserved for pronouncement of judgment, and therefore, such interlocutory applications cannot be entertained.

5. The learned counsel for the defendant-petitioner contended that though the name of witness was in the list filed, but for non-availability of address and for the reasons best known to plaintiff-respondent, the witness was not examined and left over and thereafter the plaintiff-respondent cannot be permitted to call that witness and to lead further evidence at later stage. The copy of the order sheet filed along with the revision petition reveals that on 22.9.2000 the plaintiff was examined as P.W.1, and Exs.P1 to P8 were got marked and the matter was posted for further examination in chief of P.W.1 on 21.10.2000, and from time to time the matter was adjourned on 21.10.2000, then on 14.11.2000, 29.11.2000, 13.12.2000, etc. Ultimately, on 30.5.2001 plaintiff was absent and hence it was taken that plaintiff was not tendered for further chief of P.W.1. The evidence of plaintiff's side was closed. The matter was adjourned for evidence of defendant by 2.6.2001. On 2.6.2001, the defendant was absent and there was no representation, hence defendant's side was taken as closed. On 8.6.2001, learned counsel prayed for time. The argument was finally heard on 12.6.2001 and posted for judgment by 20.6.2001. The learned counsel submits that the principle and decision of the Supreme Court in *Arjun Sing's* case (supra) is fully applicable.



6. We have heard the learned counsel for the parties and perused the material on record and the case law on the point.

7. The facts in the case of *LAXMINARAYAN ENTERPRISES vs. LAXMINARAYAN TEXTILE* (ILR 2000 KAR. 820) are that the respondents-plaintiffs filed a suit against the petitioners-defendants for recovery of certain amount of money. The learned counsel for the petitioners-defendants had put in his appearance but failed to file their written statement within the time granted by the Trial Court and also did not choose to cross-examine. The plaintiff was examined as P.W.1 at the trial. The matter was set down for pronouncement of judgment. The defendant came forward with two applications, one for permitting to file written statement and the other to recall P.W.1 for cross-examination. Under the circumstances, considering the procedure contained in Sub-Rule (4) of Order XVIII and Order IX Rule 6 CPC which was introduced on 1.2.1977 long after the decision of the Apex Court, the learned single Judge allowed the applications on the ground of this amendment and observed that the Court may for the reasons to be recorded, direct or permit any party to examine any witness at any stage.

8. The facts in *SUJATHA vs. INDIAN BANK* are that the plaintiff-bank filed a suit for recovery. After notice the defendant put in appearance and filed written statement and resisted the suit. The matter was posted on 17.6.91. The plaintiff-bank examined P.W.1 and marked Ex.P1 to Ex.P3. The defendant remained absent. The matter was posted for judgment on 22.6.1991. On

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19.6.1991 the defendant came forward with an application requesting the Court to advance the case from 22.6.1991 to 19.6.1991 and with another application under Order 18 Rule 17A read with Sec.151 CPC to recall the order dated 17.6.1991 and to give an opportunity to contest the suit. The learned single Judge has not interfered with the trial Court order which was based on the Apex Court decision.

9. On consideration, we are of the opinion that once the matter has been finally heard and posted for judgment, as held by the Supreme Court in *Arjun Sing's* case (supra) nothing is required to be done by the Court except to pronounce the judgment, and therefore the decision in *Laxminarayan Enterprises* case is not helpful. Admittedly, clause (4) of Order 18 Rule 2, of CPC has been deleted and therefore the respondent-plaintiff cannot take advantage of *Laxminarayan's* case in the facts of the given case. Even if we assume it for the sake of argument without accepting, in view of the amendment in CPC, as we find, the law relating to procedure in suits and civil proceedings are governed by CPC. The CPC has been amended from time to time. Recently also, in order to cut short the delays at various levels in disposal of civil cases, CPC was amended by the Amendment Act of 1999 with effect from 1.7.2002. In the facts of the given case, sufficient opportunity was given to the plaintiff to complete his evidence, but he has not availed the opportunity at appropriate time and thereafter his evidence was closed. The case was fixed for defendant's evidence and ultimately the case was heard and reserved for judgment on 20.6.2001. In our view, if the matter is reserved for pronouncement of judgment,

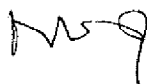


such an application is not maintainable as otherwise it will defeat the very object of amendment in speedy disposal of the cases.

10. As discussed above, in the facts of the case on hand, we are of the opinion that making an interlocutory application to reopen the case and record further evidence after the matter is reserved for pronouncement of judgment, is not permissible. We answer the question referred for decision by holding that no application can be filed after the final arguments have been heard and the matter is posted for judgment. The Single Bench decision of this Court in LAXMINARAYAN ENTERPRISES vs. LAXMINARYAN TEXTILE (ILR 2000 KAR.820) is not applicable in view of the decision of the Supreme Court and as stated above.

11. Now, the learned counsel for the parties submit that no purpose would be served by remitting the matter to the learned single Judge. The matter was reserved for pronouncement of judgment on 20.6.2001 and has not been disposed of due to these pending revision petitions. The same may be remitted to Trial Court for disposal.

12. As agreed by the learned counsel for the parties, in the circumstances of the case and as discussed, the order passed by the trial Court allowing I.As. III and V in S.C.No.18287/99 is accordingly set aside. Both the



revision petitions are allowed with no order as to costs. The Trial Court is directed to dispose of the suit, in accordance with law.

Sd/-  
Chief Justice

Sd/-  
Judge