



(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Rahul Sahai, learned counsel for revisionist.

2. Present revision has been filed for setting aside the judgment/order dated 07.04.2022 passed by Additional District Judge Court No. 1, Mathura in SCC Case No. 01/2017 (Smt. Asha Agarwal and another vs. Dinesh Kumar), and/or to allow the application 74Ga of the revisionist.

3. Learned counsel for revisionist submitted that earlier SCC Suit No. 01 of 2017 was filed by the plaintiff-opposite party No.1, upon which revisionist-defendant has preferred written submission and replica has also been filed. Accordingly, considering the written submission, issues were framed on 06.03.2018. It is next submitted that to decide the SCC Suit, it is necessarily required to frame additional issues with regard to title as well as landlordship. Therefore, revisionist-defendant has moved application under Section 23 of The Provincial Small Cause Courts Act, 1887 (hereinafter referred to as "Act, 1887") numbered as 74-Ga, which provides return of plaints in suits involving questions of title. The said application has been rejected by the Court below on the ground that after completion of evidence and during the course of arguments, just to linger on the proceeding, the application was moved. It is also observed in the impugned order that while deciding the case, if required, additional issues would be framed. It is further submitted that under Order XIV Rule 5 of Code of Civil Procedure, 1908 (hereinafter referred to as "Code, 1908"), it is required that before passing a decree, Court may amend the issues or frame additional issues on such terms as it thinks fit, but in the impugned order, it is observed that while delivering the judgment, if required, Court may frame additional issues, which is contrary to the provisions of Code, 1908. In support of his contention, he has placed reliance upon the judgment of Apex Court in the matter of *Rameshwar Dayal vs. Banda (dead) through his L.Rs. And another; ARC 1993 (1) 249*. He has also relied upon the judgments of this Court in the matters of *Vikas Pawar vs. Smt. Tara Rani and another; 2005 (1) ARC 196 and Satish Chandra Agarwal vs. Ashok Jaiswal ; 2016 (2) ARC 605*.

4. I have considered the submissions advanced by learned counsel for revisionist and perused the impugned order, provisions of law as well as judgments relied upon.

5. Revisionist-defendant has filed application under Order XIV Rule 5 of Code, 1908 for framing of additional issues, which was rejected. Issue before the Court is to decide as to whether the proceeding of SCC Court shall be governed under the provisions of Order XX of Code, 1908 or Order XIV of Code, 1908 and application under Order XIV, Rule 5 of Code, 1908 is maintainable or not.

6. Present proceeding of suit is governed by the provisions of Act, 1887 as well as Code, 1908 and Section 17 of Act, 1887 provides applicability of Code, 1908. Relevant provisions of Act, 1887 and Code, 1908 are quoted below:-

**Act, 1887**

**"17. Application of the Code of Civil Procedure.--**(1) [The procedure prescribed in the Code of Civil Procedure, 1908 (5 of 1908), shall, save in so far as is otherwise provided by that Code or by this Act,] be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, either deposit in the court the amount due from him under the decree or in pursuance of the judgment, or give [such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.]

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realised in manner provided by section 3[145] of the Code of Civil Procedure, 4[1908 (5 of 1908)]."

**Code, 1908**

**"Order XIV Rule 1. Framing of issues.-**(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one-party and denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

**Order XIV Rule 5. Power to amend, and strike out, issues.-**(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

**Order XX Rule 4. Judgments of Small Cause Courts.-** (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.- Judgments of other Courts shall contain concise statement of the case, the points of determination, the decision thereon, and the reasons for such decision.

**Order L Rule 1. Provincial Small Cause Courts.-** The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887) [or under the Berar Small Cause Courts Law, 1905] or to Courts exercising the jurisdiction of a Court of Small Causes [under the said Act or Law], [or to Court in [any part of India to which the said Act does not extend] exercising a corresponding jurisdiction] that is to say-

(a) so much of this schedule as relates to-

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;(ii) the execution of decrees against immovable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b)..... "

7. From the perusal of aforesaid legal provisions, it is clear that as per Section 17 of Act, 1887, Code, 1908 would be applicable in the matter of SCC suits also. Further, Order L Rule 1 of Code, 1908 restrains the applicability of certain provisions of Code, 1908, which also includes the settlement of issues. Order XIV Rule 1 of Code, 1908 provides for settlement of issues which includes issue of law and issue of facts both. Order XX Rule 4 of Code, 1908 provides for judgment of Small Cause Courts and says that judgments of Court of Small Cause need not contain more than the point of determination and decision thereon. Therefore, whole picture so emerges is that Code, 1908 would be applicable in SCC suit, but as per Order L Rule 1 of Code, 1908, judgment shall be pronounced as per Order XX Rule 4 of Code, 1908 and not as per Order XIV of Code, 1908.

8. So far as present case is concerned, undoubtedly, earlier SCC Court has framed "विचारण बिंदू" on 06.03.2018 which according to revisionist is the "issue". This Court has also observed that neither other issues are made out nor pressed by either of the parties for framing of additional issues. Further, Court has fixed the date of 28.03.2018 for evidence. "विचारण बिंदू" is Hindi terminology, which may be

translated as issue as well as point of determination both having almost no difference. Therefore, before coming to the conclusion as to whether its an "issue" or "point of determination", this Court has gone through the legal provisions and according to that in SCC suit, there is no provision of framing of issues, therefore, it must have been translated as point of determination under Order XX Rule 4 of Code, 1908.

9. Now another issue is as to whether application of revisionist under Order XIV Rule 1 of Code, 1908 is maintainable or not. Before deciding this question, it is necessarily required to discuss the cases relied upon by learned counsel for revisionist.

10. Learned counsel for revisionist has placed reliance upon the judgment passed by the Apex Court in the matter of **Rameshwar Dayal (Supra)**, where Court has held that point of determination referred to in Order XX Rule 4(1) of Code, 1908 are absolutely nothing but an issue as contemplated by Rules 1 & 3 of Order XIV of Code, 1908. In the said case, the issue before the Apex Court was that SCC suit was decided without framing any point of determination or issues as required either under Order XX Rule 4 or Order XIV Rule 1 & 3 of Code, 1908. The Apex Court has dealt with this issue in detail and basically Apex Court was of the opinion that before deciding the suit, point of determination or issue is necessarily required to be framed.

11. In next paragraph of the said judgement, Apex Court has held that it was obligatory for the Small Cause Courts, in the present case, to state the points for determination and give its finding or decision on each of the said points meaning thereby though in previous paragraph, Apex Court has held that issue and point of determination are same, but in next paragraph, Apex Court has clarified that so far as SCC suit is concerned, it is required to frame point of determination. Relevant paragraph Nos. 22 & 23 of judgment of **Rameshwar Dayal (Supra)** is quoted below:-

"Points for determination" referred to in Rule 4(1) are obviously nothing but "issues" contemplated by Rules 1 and 3 of Order XIV of the Code. The present decision of the Small Causes Court which has not even stated the points for determination and given finding thereon, is obviously not a judgment within the meaning of Section 2(9) of the Code. Since the matters were controversy between the parties, it is only a judgment which could have given rise to a decree. The so-called decision of the Small Causes Court, therefore, does not amount to a decree within the meaning of Section 2(2) read with Section 2(9) and Rules 4(1) and 5 of Order XX of the Code.

It is not disputed that in view of the provisions of Section 17(1) of the Provincial Small Causes Court Act, the Code is applicable to Small Causes Court except where it is otherwise provided either by the Code or the said Act. Apart from Rules 4(1) and 5 of Order XX of the Code, on this count also, it was obligatory for the Small Causes Court, in the present case, to state the points for determination and give its finding or decision on each of the said points. Hence the present decision of the Small Causes Court is not a judgment and a decree in the eye of law and is, therefore, no nest as far as the respondent is concerned."

12. This issue again came up before the **Division Bench** of this Court in the matter of **Krishna Kumar Gupta vs. Subhash Chand Surana; 2013 0 Supreme(All) 727** and Court has dealt this matter in detail and also interpreted the judgment of **Rameshwar Dayal (Supra)**. Relevant paragraph Nos. 13 & 14 of judgment is quoted below:-

"The matter can be viewed from another angle. Legislature in Order XIV of the Code has used the words framing of issues', whereas in Order XX Rule 4 pertaining to Small Causes the words used are 'points for determination and decision thereon'. The provision of Order XIV relating to 'Settlement of issues' having been expressly excluded from its application in suits and proceedings before the Judge, Small Causes under the provisions of Small Cause Courts Act by virtue of Order 50 Rule 1(b) by no stretch of imagination, it can be said that it is mandatory upon the Judge, Small Cause Court while trying a suit under the Provincial Small Cause Courts Act to frame issues as per the procedure prescribed by Order XIV and non-compliance of the said provision would vitiate the proceeding. In view of use of two different expression by the legislature namely, 'framing and settlement

of issues' and 'points for determination' it cannot be held that the procedure prescribed for framing of issues are to be adhered to or followed by a Judge, Small Causes Court. It is well-settled that when in relation to the same subject-matter different words are used in the same Statute, there is a presumption that they are not used in the same sense unless it leads to unreasonable or irrational results. No doubt the Hon'ble Apex Court had observed in the case of **Rameshwar Dayal (Supra)** that points for determination referred to in Rule 4(1) are nothing but 'issues' contemplated by Rule 1 and 3 of Order XIV of the Code but neither it has been observed specifically nor it can be inferred that procedure and stage prescribed by Order 14 of the Code for framing/settlement of issues is to be followed by the Judge, Small Causes as well while trying a suit under the Provincial Small Causes Court Act. Thus the view taken by learned single Judge in the case of Akhil Kumar Jain (Supra) that it is mandatory to frame issues in suit being tried under the Provincial Small Cause Courts Act is against the ratio of the decision of the Hon'ble Apex Court in case of **Rameshwar Dayal (Supra)**."

13. The very same issue was again subject matter before this Court in the matter of **Sardar Sujeet Singh and others vs. Suresh Chandra Porwal; 2014 0 Supreme (All) 529** and Court has again taken the same view that in light of Section 17 of Act, 1887 and Order L Rule 1 of Code, 1908 and held that so many provisions of Code, 1908 are not applicable to the proceeding of SCC suit and accordingly, Order 14 Code, 1908 has not been extended to the Courts constituted under the Act. Relevant paragraph Nos. 25 & 26 of judgment is quoted below:-

" The procedural law is enacted to regulate the proceeding in Court and the case proceeding should be conducted strictly in accordance with the prescribed procedure. The Provincial Small Cause Courts Act has been enacted with the object to decide the cases triable by the S.C.C. expeditiously. It is for this reason that as per section 17 of the Act and Order L, C.P.C. so many provisions of C.P.C. are not made applicable to the proceeding of S.C.C. suit and further the decree passed by the S.C.C. has been given finality and the decision is not appealable.

Since the provisions of settlement of issues contained in Order XIV has not been extended to the Courts constituted under 'the Act', the Application No. 58-C moved by the defendants for framing the additional issues purported to be under Rule 5 Order XIV, C.P.C. is not legally maintainable. The impugned order is completely justified in view of provisions of section 17 of 'the Act' and Order L, C.P.C."

14. Once again this issue came up before the this Court in the matter of **Vikas Gupta vs. M/s. Shri Ram Mahadev Prasad and another; 2014 0 Supreme(All) 1675**. Relevant paragraph Nos. 8, 11, 12, 13 of the said judgment is quoted below:-

"8 . From a perusal of the said Section it is manifest that the Small Cause Court has limited pecuniary jurisdiction. The intent of the legislature is manifest that the suits of small causes should be decided expeditiously. With the said view of the matter the detail procedure of the regular suit is not applicable.

11. A simple reading of aforesaid Rules 4 and 5 make it clear that the judgment of a Court of Small Causes need not contain more than the points for determination and the decision thereon, whereas judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

12. The distinction between sub rule (1) and (2) of Rule 4 of Order XX of the CPC by itself is sufficient to indicate that the Small Causes Court is a summary proceedings and detailed reasons are not required to be given in judgments. The point for determination does not need for framing an issue and there is no need for the procedure applicable for the regular civil suits. In case the detail procedure of regular suit is also followed in the matter of the Small Causes Court, the very object of the Act No. 9 of 1887 shall be frustrated. Therefore, the submission of the learned Counsel for the revisionist does not stand to reasons.

13. After careful consideration of the matter, I am of the view that framing of the issue in the suits under the Act No. 9 of 1887 is not mandatory. It is a discretion of the court to formulate some points for determination, if it needs it is necessary to meet the ends of justice, but framing of the

issue like a regular suit, as stated above, would be against the object of the Act to dispose of small matters expeditiously."

15. Learned counsel for revisionist also relied upon the judgments of *Vikas Pawar (Supra)* and *Satish Chandra Agarwal (Supra)*. While deciding the issue, this Court in *Vikas Pawar (Supra)* has not considered Paragraph No. 23 of the judgment of *Rameshwar Dayal (Supra)*, which clarifies that in the matter of SCC suit, point of determination is required to be framed. Similarly, while deciding the matter of *Satish Chandra Agarwal (Supra)*, this Court has not considered the judgment of Division Bench of this Court in the matters of *Kisan Udyog (Supra)* and *Sardar Surjeet Singh (Supra)*, where this issue has been clarified with observations that proceeding of SCC suit shall be governed by the provisions of Order XX, Rule 4 of Code, 1908 and not by the provisions of Order XIV, Rule 5 of Code, 1908 which is the intention of the judgment given in *Rameshwar Dayal (Supra)* also.

16. As earlier mentioned, while deciding the SCC suit, provisions of Act, 1887 and Code, 1908 would be applicable. Certainly, Section 17 of Act, 1887 provides for applicability of provisions of Code, 1908 whereas Code, 1908 is having different provisions for Civil Suit and SCC Suit. One Code, 1908 is having two different provisions for deciding Civil Suit, therefore, it cannot be said that both the provisions would have same meaning. Order XIV of Code, 1908 says for settlement of issue in Civil Suit whereas Order XX, Rule 5 of Code, 1908 says for framing of point of determination in SCC Suit and Order L Rule 1 of Code, 1908 clearly bars the certain provisions of Code, 1908 including settlement of issues also. Therefore, intention of legislation is very much clear while having two different provisions for Civil Suit and SCC Suit and it cannot be said that Order, XIV Rules 1 & 3 & Order XX Rule 4 of Code, 1908 are having the same meaning. Mandate of Order L Rule 1 of Code, 1908 cannot also be ignored which is inserted by the legislation to remove any confusion while dealing with the provisions of Order XIV Rules 1 & 3 and Order XX Rule 4 of Code, 1908. Further, in the case of *Rameshwar Dayal (Supra)*, Apex Court has considered this fact and clarified that in the matter of SCC Suit, point of determination has to be decided.

17. Now coming again to the issue involved in the present case, there is no doubt on this point that Court below has framed point of determination vide order dated 06.03.2018, upon which both the parties were having no objection for more than four years and only after closure of evidence, there is no occasion for filing application for framing additional issues or point of determination. Inordinate delay in filing application intends towards the delaying tactics adopted by the revisionist-defendant coupled with this fact that while framing the point of determination vide order dated 06.03.2018, revisionist was not aggrieved. Secondly, though Order XIV of Code, 1908 is not applicable, but even if it provides that it is upon Court to amend the issue or frame additional issue at any time before passing of decree and this view has also been upheld by the this Court in the matter of *Kisan Udyog vs. United Bank of India; 1989 0 Supreme(All) 233*. Relevant paragraph No. 4 of the said judgment is quoted below:-

"4 . In the instant case the plaintiff has filed a suit for the recovery of Rs. 52479/- together with interest at the rate of 13% per annum. This amount has been claimed in view of the alleged advance having been made. It is alleged on behalf of the plaintiff that the defendants executed an agreement. In any case it is for the plaintiff to satisfy the court that the amount is due and is recoverable from the defendants. No doubt, the defendants may resist the claim in the Court. However, if by such a refusal to frame issues a serious prejudice is being caused to the plaintiff or the defendants then it is always expedient for the trial court to exercise its jurisdiction in framing such issues to facilitate the parties to adduce evidence in the light of pleadings on the basis of which issues were framed. In the instant case I do not find that any prejudice would be caused to the defendant applicant. It is the discretionary power of the trial court to frame additional issues if it finds it necessary for determining the list between the parties but merely refusal to frame additional issues does not give a right to the parties to prefer a revision as by such refusal to frame such additional issues neither the rights nor the obligations of the parties are adjudicated upon. As no right or obligation of a party is determined by refusal to frame additional issues it cannot be held to be deciding a case so as to attract the expression "case which has been decided."

18. Therefore, it is upon the Court to have a new point of determination before pronouncing the judgment, if so required and there is no illegality in the observations made by the Court below in the impugned order.

19. From the perusal of impugned order, it is very much clear that SCC Court has rightly held that in the light of Order L Rule 1 of Code, 1908, there is no provision for framing issues and provisions of Order XIV Code, 1908 shall not be applicable. It is also held that in impugned order, revisionist-defendant has not claimed himself to be the owner of property and co-owner/landlord may also have the right to file suit for eviction, therefore, there is no issue of title between tenant and landlord before SCC Court. On facts too, there is no illegality in the order impugned. It has been rightly held in the impugned order that point of determination was framed on 06.03.2018 agreed between the parties and after closer of evidence, filing of such application is nothing but an attempt to linger on the proceeding.

20. Therefore, in the light of discussions made here-in-above about the law and facts, I found no good reason to interfere in the impugned order. Revision lacks merit and is accordingly, **dismissed**.

No order as to costs.

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