

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.458 OF 2009
IN
SUMMARY SUIT NO.1686 OF 2000

Union Bank of India .. Appellant
-Versus-
J. Raj & Co. and Ors. .. Respondents

WITH
APPEAL NO.459 OF 2009
IN
SUMMARY SUIT NO.1687 OF 2000

Union Bank of India .. Appellant
-Versus-
J. Raj & Co. and Ors. .. Respondents

WITH
APPEAL NO.460 OF 2009
IN
SUMMARY SUIT NO.1519 OF 2000

Union Bank of India .. Appellant
-Versus-
J. Raj & Co. and Ors. .. Respondents

Mr. Jamshed Ansari for appellant
None for respondent

CORAM : V.M.KANADE &
N.M.JAMDAR, JJ.
DATE : 12th June 2017.

P.C.

1] Heard learned Counsel appearing for appellants – Union

Bank of India. None appears for respondents, though they are served.

2] The short question which falls for consideration before this Court is, “whether a suit can be dismissed under Rule 227 of the High Court (Original Side) Rules, if the plaintiff in summary suit does not take out summons for judgement within a period of six months from the date of filing of the suit?”

3] In the present case, the appellant had filed the above three suits under Order XXXVII of Code of Civil Procedure. The said suits were filed in the year 2000. However, the summons for judgments in respective suits were not taken out within the time of six months. Since on this issue there were number of conflicting judgements, this question/ matter was referred to the Division Bench of this Court. The Division Bench after hearing, in the case of **Bankay Bihari G. Agrawal and Ors. Vs. M/s. Bhagwanji Meghji & Ors., reported in 2001 (1) Mh. L.J. 345** framed two questions, which could be found in para 3 of the Division Bench order. Para 3 of the said order reads thus:-

“3. After hearing the Counsel, we are satisfied that, in order to resolve the controversy that has arisen, it is necessary to re-formulate the terms of this Reference itself. Hence, the Reference is re-formulated as under:-

(1) What is the legal consequence of a Summons for Judgement not being taken out by a plaintiff within the period of 6 months of the plaint being filed?

(2) Upon such failure of the plaintiff, is the defendant, as a matter of course, entitled to unconditional leave to defend the suit irrespective of the merits of the defence?

4] After taking into consideration the relevant Original Side Rules and Judgements of various courts, the Division Bench of this Court answered these questions as under:-

“54. For the aforesaid reasons, we decide the questions referred to us as under:-

Question : (1) What is the legal consequence of a Summons for Judgement not being taken out by a plaintiff within the period of 6 months of the plaint being filed?

Answer: The suit is liable to be placed on the board of the Chamber Judge for dismissal. It is open to the plaintiff to contend before the Chamber Judge that for good reasons the suit ought not to be dismissed. It is left to the Judicial discretion of the Chamber Judge to dismiss the suit or direct it to proceed on such terms as he deems fit.

Question : (2) Upon such failure of the plaintiff,

is the defendant, as a matter of course, entitled to unconditional leave to defend the suit irrespective of the merits of the defence?

Answer: A delay in taking out Summons for Judgement beyond the period of 6 months prescribed by Rule 227 does not automatically entitle the defendant to unconditional leave to defend the suit; but it is a relevant factor to be considered in conjunction with the nature of the defence while granting conditional or unconditional leave to defend the suit or refusing the application for leave to defend."

5] It is thus clear that the Division Bench came to the conclusion that these suits cannot be automatically dismissed merely because the summons for judgement is not taken out within stipulated time. At the most it can be taken as a ground for granting unconditional leave to defend the suit to the defendants.

6] We are, therefore, of the view that the learned Single Judge had erred in dismissing the said three suits filed by the appellants and he ought to have granted unconditional leave to defend the suit to the defendants.

7] The impugned order is, therefore, set aside. The suits are restored to the file. We however, make it clear that unconditional

leave to defend the suit is granted to the defendants. The defendants shall file their written statement within six months from today. Appeals are accordingly allowed in the aforesaid terms and disposed of.

(N.M.JAMDAR, J)

(V.M.KANADE, J.)