
(2014) 08 RAJ CK 0052
In the Rajasthan High Court
Case No : Civil First Appeal No. 97/2012

Anjana Maheshwari

APPELLANT

Vs

Ratan Lal

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15(4), Order 7 Rule 11(e), 96

Citation : (2014) 08 RAJ CK 0052

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This appeal u/s 96 CPC is directed against the judgment and decree dated 10.01.2012 passed by the learned District Judge, Chittorgarh ("the trial court"), whereby, the plaint filed by the appellant-plaintiff has been rejected under provisions of Order VII, Rule 11(e) CPC.

2. Despite serve of notice on the respondent twice in this appeal for final disposal, no one has put in appearance and no one is present on behalf of the respondent.

3. The facts in brief may be noticed thus: the appellant-plaintiff filed the suit for recovery of a sum of Rs. 1,09,000/- from the respondent, inter alia, with the pleadings that for an amount lent to the defendant, the cheque was issued by him and when the cheque was presented before the Bank, the same was dishonoured by the Bank and, therefore, the defendant was liable to make payment of the amount of cheque alongwith interest @ 12%.

4. A written statement was filed by the respondent-defendant, who disputed the plaint averments.

5. On the pleadings of the parties, the trial court framed three issues. On behalf of plaintiff, she herself was examined and on behalf of defendant, he himself was

examined.

6. Thereafter the arguments were heard by the trial court and on coming to the conclusion that the plaint was not signed by the counsel, the affidavit filed alongwith the plaint was not notarized and the duplicate copy of the plaint was not signed by the counsel, the plaint was ordered to be rejected under Order VII, Rule 11(e) CPC.

7. The relevant portion of the impugned judgment reads as under:-

8. Heard the appellant and perused the record.

9. It is submitted by the appellant that the observations made by the trial court are factually incorrect inasmuch as the plaint in fact has been signed by the counsel, the defect pertaining to affidavit was a formal defect and the fact that the duplicate copy of the plaint was not signed by the counsel is meaningless as the same was signed by the plaintiff herself. Further, the fact that the copy of the affidavit was not filed alongwith the duplicate copy cannot be said to be fatal and as such the judgment passed by the trial court deserves to be set aside.

10. Provision of Order VII, Rule 11(e) CPC reads as under:-

11. A bare look at the order passed by the trial court as quoted above, would reveal that the Court though has rejected the plaint under provisions of Order VII, Rule 11(e) CPC, it has indicated the reasons in the judgment, which are apparently beyond the scope of the said provision.

12. While provisions of Order VII, Rule 11(e) CPC provides for rejection of plaint in a case, where duplicate copy of a plaint has not been filed, in the present case, a perusal of the record indicates that duplicate copy of the plaint, in fact, was filed, the fact that the said filing was not in accordance with the provisions of Order VI, Rule 15(4) CPC is of absolutely no consequence.

13. Besides the fact that the purpose and the requirement of filing the duplicate copy of the plaint had already been over as the defendant had already appeared; filed his written statement; issues were framed and evidence was led. Whereafter to invoke the provisions of Order VII, Rule 11(e) CPC appears to be an effort on part of the trial court to find a shortcut for disposal of the case instead of deciding the same on merits. The other defects pointed out by the trial court also cannot be said to be affecting the jurisdiction of the Court so as to result in rejection of the plaint.

14. The most outstanding feature of the entire case is that no objection in this regard was ever raised by the defendant and it appears that the trial court after hearing the final arguments from the parties on perusal of the record on its own has rejected the plaint and that also on wholly non-existent grounds.

15. The courts are essentially meant for dispensing justice and not to indulge in rejecting the plaints and/or dismiss the proceedings for apparently no reason and/or for reasons, which does not affect the jurisdiction of the Court. Therefore,

the judgment passed by the trial court cannot be sustained on any of the grounds indicated in the judgment.

16. Consequently, the appeal is allowed. The judgment and decree dated 10.01.2012 passed by the trial court is set aside. The suit is remanded back to the trial court with a direction to hear the arguments of the parties/counsel for the parties again and, thereafter decide the suit on merits.

17. Record be sent back to the trial court immediately.