

(1967) 06 DEL CK 0005

In the Delhi High Court

Case No : Revision Application No. 30 of 1966

Collector Mandi

APPELLANT

Vs

Som Krishan

RESPONDENT

Date of Decision : 08-06-1967

Acts Referred:

Citation : (1967) 3 DLT 559

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : Sushil Malhorta and H.L. Vaidya, for the Appellant;

Judgement

S.K. Kapur, J.

(1) The land of the petitioner situate in Mohal Bhojpur District mandi was acquired under the provisions of the land Acquisition Act. Som Krishan respondent dissatisfied with the award made a reference u/s 18 of the Land Acquisition Act before the District Judge who enhanced the amount of compensation by Rs. I, II.:.12paise. The Collector filed an appeal which was heard by the learned Additional Judicial Commissioner. The appeal was accepted on February 22, 1965, and the case was remanded to the District Judge. Respondent Som Krishan was also allowed an opportunity to adduce evidence provided he paid Rs 75 as costs. It is the case of the collector that Som Krishan respondent directed to appear before the learned District Judge on March 25, 1965, and also to pay costs on that date. On March 25, 1965 the respondent did not appear but his counsel Shri Vidya Sagar who was present in Court made a statement that he had no instruction in the matter. The Court ordered that since costs had not been paid, the reference be dismissed.

(2) On March 26, 1965, the respondent Som Krishan made an application for restoration of the reference It was alleged in the application that the learned additional Judicial Commissioner had directed the parties to appear on March 26, 1965, but the case wa

(3) Aggrieved by the decision of the District Judge the Collector has now come up in revision u/s 33 of the Himachal Pradesh (Courts) Order, 1948. Under the said section the Court has power to rectify errors of jurisdiction and further consider important questions of law or custom involved in the case. The decision of the learned District Judge as to the existence of the sufficient cause, based as it is on evidence, does not raise any question of jurisdiction or question of law, muchless important question of law, within the meaning of section 35 of the Himachal Pradesh (Courts) Order, 1918.

(4) The learned counsel for the petitioner argued that wrong inferences of facts had been drawn from the evidence on record and that raised an important question of law. I am afraid I cannot agree. The finding on the sufficiency of the cause for the non-appearance is a pure finding of fact which I am not competent to interfere.

(5) The learned counsel for the petitioner then contended that the order of the learned District Judge dismissing the reference was an order under Order 17, Rule 3, Civil Procedure Code, and consequently the provisions of Order 9, Rule 9 did not apply the remedy of the person aggrieved by order under O.17, R. 3, C. P. Code, being either to file an appeal or application for review. He further contended that provisions of O-17, R.2, Civil Procedure Code, did not apply as the counsel for Som Krishan respondent was present in Court on March 25, 1965, though he stated that he had no instructions in the matter. In support of the above proposition, he relied on Panna Lal v. Bishan Devi. That decision is of no avail to the petitioner. In that case on the date fixed for the final disposal of the case the plaintiff's counsel appeared and filed an application for adjournment. that application was refused and thereupon the plaintiff's counsel stated that he had no further instructions to proceed with the suit. The Full Bench of the Allahabad High Court decided that in view of explanation added by the Allahabad High Court to R 2 of O-17, C. P. Code, the order dismissing the suit for default of the plaintiff could not be treated as an order under R. 2 of O. 17, C.P. Code. The said explanation which does not apply to Himachal Pradesh reads as under:

""No party shall be deemed to have failed to appear if he is either present or is represented in Court by agent or pleader though engaged for the purpose of making an application." (6) Before a party can be treated as represented by a lawyer for the purposes of O-17, R. 2, it is necessary that the lawyer should have been duly instructed and able to answer all material questions relating to the suit. A lawyer appearing without any instructions cannot be treated as present on behalf of a party. Where a counsel says that he has no instructions the inference is that he is not authorized to appear on his client's behalf and his appearance is tantamount to no appearance at all.

(7) Order 3, Rule 1 and Order, 5, Rule 1, Civil Procedure Code, also shed considerable light in support of this proposition. In this case the counsel Mr. Vidya Sagar had on March 25, 1965, stated that he had no instructions. It must.

Therefore, be held that on that day there was no appearance by or on behalf of Som Krishan respondent. Panna Lal's case is based on the explanation where the scope of Rule 2, Order 17, C. P. Code, had been extended and appearance of a counsel instructed to make an application was treated as appearance in the suit. That is not the case here. Rule 2 of Order 17, Civil Procedure Code, could, therefore, apply. Rule 3 of Order 17 is not mandatory as appears from the words "the Court may.....". The provisions of Rule 3 are penal and should be resorted to only if the facts do not admit of the application of any other provision. Moreover, under the said provision the Court is enjoined to decide the case on merits on consideration of such materials as may be available. This provision does not entitle a court to make a summary decision by way of penalty. The jurisdiction of the Court is ""to decide the suit forthwith" and the provision will not apply if the Court has not decided the suit on merits. In all such cases the substance of the order has to be examined to find out whether the order is made under Rule 2 or Rule 3 and unless the facts and circumstances clearly lead to the conclusion that the order was made under Rule 3, it should be treated as one under Rule 2. In cases where a party to whom time had been given for doing an act mentioned in Rule 3 commits default in doing of that act and also absents himself on the date of hearing, different Courts have taken different views as to which of the two rules Rule 2 or 3 of Order 17 should be applied. Some High Courts hold that in such cases the Court should proceed under Rule 2 while others take the view that the Court can proceed under Rule 3 if there exist materials on record to enable it to come to a decision on merits otherwise the Court should proceed under Rule 2. I need not address myself on this controversy as in my opinion the Court did not decide the matter on merits but acted under Rule 2. My conclusion, Therefore, is that the order made by the District Judge on March, 25, 1965, was not made under Rule 3, Order 17, Civil Procedure Code, and he was competent to pass the impugned order, restoring the reference.

(8) This petition, Therefore, fails and is dismissed with costs.