
(1960) 04 MP CK 0036

In the Madhya Pradesh High Court

Case No : Civil Revision No. 282 of 1959

Dayaram Bhagirathi Satnami

APPELLANT

Vs

Jokhura Munda Sonar

RESPONDENT

Date of Decision : 08-04-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6, Order 9 Rule 1
Provincial Small Cause Courts Act, 1887 — Section 17(1)

Citation : AIR 1960 MP 393 : (1960) JLJ 920 : (1960) 5 MPLJ 1080

Hon'ble Judges : T.P. Naik, J

Bench : Single Bench

Advocate : A.D. Deoras, for the Appellant; R.K. Verma, for the Respondent

Judgement

T.P. Naik, J.

The plaintiff-applicant filed a suit against the defendant-non-applicant claiming Rs. 450/-with costs. The defendant-nonapplicant made a counterclaim of Rs. 196/- and costs. On 29-7-58 the plaintiff was absent and consequently his suit was dismissed in default. As regards the counter-claim the Court held the plaintiff to be ex parte and after recording the statement of the defendant found the claim proved and passed a decree in his favour for Rs. 196/- with costs.

On 5-9-1958 the plaintiff applied for setting aside the ex parte decree as also for setting aside the dismissal of his suit in default of his appearance. By order dated 2-2-1959 the trial Court held that the plaintiff-applicant had made out a good case for the restoration of the suit but held that even after restoration it would have to be dismissed because the provisions of the proviso to Section 17 of the Provincial Small Cause Courts Act had not been complied with.

Under Order 8, Rule 6(2) of the Code of Civil Procedure, a written statement filed by the defendant in respect of his counter-claim has the same effect as a plaint. Consequently, in the instant case, in effect there were two suits which were being tried simultaneously, one by the plaintiff-applicant against the defendant-

nonapplicant for Rs. 450/- and the other by the defendant-nonapplicant against the plaintiff-applicant for Rs. 196/-.

When the plaintiff was absent on 29-7-1958 two results followed. The suit of the plaintiff-applicant was dismissed in default of his appearance. But in the suit wherein the defendant had counter-claimed against the plaintiff, he (the plaintiff) was declared ex parte and an ex parte decree was passed against him. If the plaintiff-applicant wanted to set aside this ex parte decree, the proviso to Section 17 of the Provincial Small Cause Courts Act would be attracted. In so far as the provisions of Section 17 had not been complied with, the decree passed on the counter-claim could not be set aside.

This, however, did not touch the right of the plaintiff to recover Rs. 450/- on the basis of his suit which had been dismissed in default. The trial Court had found, and that finding was not challenged before me, that there was sufficient cause for the non-appearance of the plaintiff on 29-7-1958, as he was ill on that date. On this finding, the dismissal of the suit for default will have to be set aside as the trial Court had correctly held, but there was no justification for further dismissing the plaintiff's suit after restoration on the ground that his other prayer regarding the setting aside of the ex parte decree could not be granted as the proviso to Section 17 had not been complied with. The restoration of the suit of the plaintiff will leave untouched the ex parte decree passed in favour of the defendant-nonapplicant. It will result in the reopening of the plaintiff's claim only.

I, therefore, set aside the dismissal of the suit of the plaintiff and remand the case for a fresh trial and decision on merits. This, however, shall have no effect on the decree passed in favour of the defendant which shall stand. In the circumstances of the case, parties shall bear their own costs throughout.