

(2009) 05 P&H CK 0163
In the Punjab And Haryana At Chandigarh

G.D. Tools Pvt. Ltd.

APPELLANT

Vs

Punjab State Electricity Board and Another

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 3

Citation : (2009) 05 P&H CK 0163

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.

C.M. No. 2257-C of 2009

1. Allowed as prayed for.

R.S.A. No. 794 of 2009

2. This regular second appeal is directed against the judgment and decree dated 10.10.2008 passed by the learned Courts below, vide which the suit filed by the plaintiff/appellant seeking declaration that the demand of Rs. 1,30,405/- by defendant No. 2 qua electric connection No. KK-37/0341 (NRS), is wrong, incorrect, illegal, unlawful, arbitrary, unjust, improper and not in accordance with the circulars and instructions of the PSEB, therefore, not binding on the rights of the plaintiff/appellant, with consequential relief of permanent injunction restraining the defendant/respondents from dis-connecting the electric connection, has been ordered to be dismissed.

3. The admitted facts are, that the plaintiff/appellant prior to filing of the present suit had approached the Consumer Forum. However, he withdrew the complaint and filed the suit. The suit was contested, wherein it was pleaded that the amount was rightly claimed as per the instructions and circulars.

4. The plaintiff/appellant submitted affidavit along with the documents in examination-in-chief, but he could not be cross-examined on the date, as on the request of the learned Counsel for the defendant/respondents, the case was adjourned for cross-examination. Thereafter in spite of availing six opportunities, including last two opportunities, the plaintiff/appellant failed to appear for cross-examination. The learned trial Court closed the evidence and dismissed the suit under Order 17 Rule 3 of the Code of Civil Procedure. The appeal filed by the plaintiff/appellant also stands rejected. The learned Counsel for the appellant contends that the appeal raises the following substantial questions of law:

1. Whether the learned Courts below erred in law in dismissing the suit filed by the plaintiff/appellant under Order 17 Rule 3 CPC?

2. Whether the learned Courts below were justified in closing the evidence of the plaintiff/appellant though sufficient cause was shown for non appearance?

5. In support of the substantial questions of law, the learned Counsel for the appellant contends, that the learned Courts below erred in law in invoking the provisions of Order 17 Rule 3 instead of dismissing the suit in default under Order 17 Rule 2 of the Code of Civil Procedure. Therefore, the judgment and decree cannot be sustained.

6. The learned Counsel for the appellant also contends, that the learned Courts below committed an error in closing the evidence, though on the date of examination-in-chief the plaintiff/appellant was present for cross-examination but it was on the request of the learned Counsel for the defendant/respondents, that the case was adjourned. The absence thereafter was for the reasons beyond the control of the plaintiff/appellant. The learned Court ought to have given further opportunity to the plaintiff/appellant to submit himself to the cross-examination. The contentions of the learned Counsel for the appellant cannot be accepted. The learned Courts below on the failure of the plaintiff/appellant to submit for cross-examination rightly invoked the provisions of Order 17 Rule 3 of the CPC to dispose of the suit by dismissing it for want of evidence.

7. The second contention of the learned Counsel for the appellant, that the learned Courts below wrongly denied the opportunity of leading evidence also cannot be accepted, as admittedly the plaintiff/appellant was given six opportunities, including last two opportunities. However, appellant has failed to give any explanation for his absence on last two dates. The learned Courts below, therefore, rightly exercised the discretion in closing the evidence of the plaintiff/appellant.

8. The substantial questions of law raised are answered against the appellant.

9. No merit.

10. Dismissed.