
(1994) 03 MP CK 0012
In the Madhya Pradesh High Court

M.P. Electricity Board

APPELLANT

Vs

M.P.S.R.T.C. and Another

RESPONDENT

Date of Decision : 02-03-1994

Acts Referred:

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

Citation : (1995) 2 ACC 423

Hon'ble Judges : M.V. Thamaskar, J

Bench : Single Bench

Judgement

M.V. Thamaskar, J.—This is an appeal filed against the dismissal of the suit under Order 17 Rule 3 CPC by First Additional Judge to the Court of District Judge, Satna in Civil Suit No. 10-B/84 dated 8.3.1990.

2. Facts not in dispute are that M.P.E.B., Jabalpur had filed a suit for recovery of Rs. 31,300/- and an amount paid by M.P.E.B. towards compensation to one of its employee on account of death in an accident caused by the vehicle of M.P.S.R.T.C. The matter was listed for recording of evidence. The Counsel for the appellant-plaintiff sought time to produce the evidence. The perusal of the order discloses that after framing the issues on 16.6.1988, the suit was listed for evidence on 6.2.1989, 7.8.1989, and 8.11.1989 and 8.3.1990. on none of the dates, plaintiff produced its witnesses, nor on 8.3.1990 evidence was produced though the Advocate Mr. Tripathi was present for the plaintiff. The learned Trial Court proceeded to decide the suit under Order 17 Rule 3 CPC and dismissed the same in absence of any evidence. Against the said order, this appeal has been filed. The only submission made by the learned Counsel for the appellant is that the Court ought to have not proceeded under Order 17 Rule 3 CPC but under Order 17 Rule 2 and the proviso has one of the parties i.e., the M.P.E.B. was not present.

3. The question for consideration is whether the order passed by the Trial Court dismissing the suit and proceeding under Order 17 Rule 3 CPC is proper?

4. A perusal of the Order 17 Rule 3 CPC shows that if where the party to whom time has been granted fails to produce his evidence etc., for the further progress of the suit for which it has been allowed, the Court may not standing such default proceed to decide the suit forthwith. In the instant case, it is clear that the suit was fixed for recording of the evidence of the plaintiff and plaintiff did not produce the evidence. The question is whether the present order can be said to be one falling within the ambit of Order 17 Rule 2 CPC ? It is true that Rule 3 is more stringent but in the instant case it is clear that the party know that the evidence has to be lead and despite the said knowledge did not produce the evidence. In the circumstances, the Court did not commit any error in proceeding under Order 17 Rule 3 CPC. Once the Counsel appears and represents the party, the presence of the party will be taken, as or party such in order to proceed under Order 17 Rule 3 CPC.

5. Relying on Rama Rao and Others Vs. Shantibai and Others, I am of the view that the Trial Court did not commit any error in proceeding to decide the suit forthwith and dismissing the same for want of evidence. The appeal is therefore dismissed, with costs.