
(2005) 08 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 866 of 2002

Mst. Lakshmi

APPELLANT

Vs

Dr. Ajay Kumar and Others

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 32 Rule 10, Order 32 Rule 11, Order 32 Rule 12, Order 32 Rule 13
Contract Act, 1872 — Section 12
Hindu Marriage Act, 1955 — Section 13(1)

Citation : AIR 2006 P&H 77 : (2006) 1 CivCC 588 : (2006) 1 CivCC 56 : (2006) 142 PLR 289 : (2005) 4 RCR(Civil) 648

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.L. Garg, for the Appellant; Arihant Jain, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is defendant's appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity "the Code") challenging the view taken by the learned District Judge, Sangrur, in his judgment and decree dated 5.10.2001 holding that the suit of the plaintiff-respondent No. 1 for specific performance of contract dated 26.10.1994 entered between the plaintiff-respondent No. 1 and defendant-appellant alongwith two others deserve to be decreed in favour of the plaintiff-respondent No. 1. It has further held that Shri Om Parkash, defendant-respondent No. 4, who is one of the share holders in the suit property, could not be considered as a lunatic or a person of unsound mind. The learned District Judge has revered the findings recorded by the trial Court in its judgment and decree dated 27.11.1998, whereby the learned trial Court had dismissed the suit of the plaintiff-respondent No. 1.

2. The case of the plaintiff-respondent No. 1 as emerges from the pleadings is that Lakshmi daughter of Daulat Ram (defendant-appellant) along with Sant Ram Chatwala son of Duni Chand (defendant-respondent No. 2), Bimla Devi daughter

of Duni Chand (defendant-respondent No. 3) and Om Parkash son of Daulat Ram (defendant-respondent No. 3) were owner of a house No. 604, measuring 123 sq. yards., situated at Sangrur, as fully described in the head note of the plaint. They had agreed to sell the house to the plaintiff-respondent No. 1 for a sum of Rs. 1,70,000/- vide written agreement dated 26.10.1994. Sant Ram Chatwala, defendant-respondent No. 2, had executed the agreement on behalf of his sister being her Special Attorney. A sum of Rs.50,000/- as earnest money was paid and another sum of Rs.50,000/- was to be paid upto 15.2.1995. The sale deed was to be executed by 30.4.1995 when the payment of balance consideration was also to be paid. The house was in possession of the defendant-appellant Smt. Lakshmi Devi who also signed the agreement to sell in token of her consent stating that she would deliver the vacant possession of the house to the plaintiff-respondent No. 1 at the time of execution of the sale deed. The plaintiff-respondent No. 1 claimed that he has always been ready and willing to perform his part of the contract because on 15.2.1995 i.e. the agreed date for execution of the sale deed, he sent a telegram to Sant Ram Chatwala, Bimla Devi and Om Parkash to accept the balance amount of sale consideration and to execute the sale deed. The receipt of the telegram was acknowledged by the defendant respondents 2 to 4; namely Sant Ram Chatwala, Bimla Devi and Om Parkash who had agreed for execution of the sale deed as per the terms of the agreement. However, despite legal notice those defendant-respondent Nos. 2, 3 and 4 did not execute the sale-deed. The suit was not contested by defendant-respondent Nos. 2, 3 and 4 and they were proceeded exparte after a notice was published in the newspaper in the English daily "The Tribune", dated 24.8.1996. However, the suit was contested by the defendant-appellant who was impleaded as defendant No. 4 in the suit. She denied the execution of agreement to sell and asserted that the aforementioned three persons, who were proceeded exparte, had never agreed for the sale of their house. She further pleaded that Om Parkash, defendant-respondent No. 4, was of unsound mind. It was claimed that Om Parkash had been under the constant treatment of Mental Doctor. Defendant-appellant further claimed that she was in possession of the house as a tenant @ Rs.200/- per month.

3. After framing issues, recording evidence and hearing arguments of the parties, the trial Court recorded a categoric finding that Om Parkash, respondent-defendant No. 4 is a person of unsound mind and as such he could not have executed any agreement nor any such agreement is binding on him. The analysis of the evidence as well as conclusion drawn by the trial Court on the aforementioned issue read as under: -

11. I do not find any force in the arguments of the learned counsel for the plaintiff. DW-3 brought the record from the Punjab Mental Hospital, Amritsar and deposed on oath that he has brought the reception order No. 649/Misc. dated 11.4.1980 by Sub Divisional Magistrate, Sangrur and lunatic Om Parkash son of Daulat Ram, resident of Sangrur was sent to Mental Hospital, Amritsar, on the application of Lachmi Devi of Gurdial Singh of Sangrur. On this order, finger

prints of the patient were obtained and he identified the signatures of medical Superintendent Baldev Kishore and further deposed that the original he has seen and the photostat copy of the endorsement is Ex.DI. The exhibition of this document was objected to, but the objection is without any basis because this witness brought the original record of the Punjab Mental Hospital, Amritsar and identified the signature of Shri Baldev Kishore, Medical Superintendent and as such, the same can be read into evidence and the objection is overruled. He further deposed that the patient was ordered to be admitted and on the history recorded there are signatures of Dr. Sarita Sood whose signatures he identified which is Ex.D2. This document was again objected to, but since the original was produced and the signatures of Dr. Sarita Sood, were identified by this witness, therefore, this "document can also be read into evidence. He further deposed that the patient was admitted in hospital and his history was recorded and the disease was diagnosed. The patient was given electric shocks. He identified the signatures of Dr. Sarita Sood and Dr. Rajinder Pal Arora and the photostat copy of the file of the hospital is Ex.D3, it is proved that Shri Om Parkash son of Daulat Ram of Sangrur was sent by Sub Divisional Magistrate, Sangrur, to the Superintendent, Punjab Mental Hospital, Amritsar, on the application of Smt.Lachmi Devi and on the basis of the certificate of Dr. Dalbir Singh, Senior Medical Officer, Civil Hospital, Sangrur, said Om Parkash who is defendant No. 3 in the present case was treated at Mental Hospital, Amritsar as per the history recorded by the doctors and he was suffering from excited schizophrenia. Defendant No. 3 was mentally ill and he was even given electric shocks and the oral evidence of DW1 and DW2 shows that he is still mentally ill and is unable to understand anything. The onus shifted upon the plaintiff once it was proved that Om Parkash defendant was mentally ill, to prove that he is not mentally ill, but in rebuttal, the plaintiff has not led any evidence, therefore, it is proved on record that defendant No. 3 is of unsound mind and a person of unsound mind cannot execute any agreement on his behalf nor any such agreement is binding upon him. Accordingly, this issue is decided in favour of the defendants and against the plaintiff.

4. While deciding the other issues as to whether the other three defendants had agreed to sell the house in dispute to the plaintiff-respondent No. 1, whether any earnest amount of Rs.50,000/- was received and whether the plaintiff-respondent No. 1 was ready and willing to execute the agreement on his part, the trial Court was apparently influenced by the finding that Om Parkash, defendant-respondent No. 4, was lunatic and obviously he could not have exercised his discretion to sign the agreement to sell or deemed to have received earnest amount of Rs.50,000/-. The agreement dated 26.10.1994, was, therefore, found to be illegal and invalid. It was further concluded that even if the agreement to the extent of the share of Om Parkash is considered invalid, no part performance of the contract could be granted. It was, however, accepted that the plaintiff-respondent No. 1 has always been ready and willing and that he was still ready and willing to perform his part of the contract.

5. On the appeal filed by the plaintiff-respondent No. 1, the learned District Judge, Sangrur, after close analysis of the entire evidence came to the conclusion that the whole record and evidence produced by the defendant-appellant on the issue of unsound mind belonged to the year 1980 and it has not been proved on record that at the time of execution of the agreement on 26.10.1994 or at the time of filing the suit on 9.4.1996, the mental condition of Om Parkash, defendant-respondent No. 4, continued to be the same. The learned District Judge closely examined the documentary evidence as well as the oral statements in para 11 of his judgment and the same read as under-

11. The defendant has produced the records from the Mental Hospital, Amritsar showing that Om Parkash was of unsound mind. In this connection, the orders dated 11.4.1980 passed by the Sub Divisional Magistrate, Sangrur show that the Sub Divisional Magistrate had not seen the lunatic personally before making that order. He passed the order on the basis of a certificate, issued by Dr. Dalbir Singh, S.M.O., Civil Hospital, Sangrur that Om Parkash was of unsound mind. The report of Dr. Dalbir Singh was made on an application made to S.M.O., Civil Hospital, Sangrur to know as to the condition of Om Parkash. The Doctor only opined that the patient seemed to be of unsound mind and he recommended sending him to the Mental Hospital, Amritsar. The diagnosis made by the Mental Hospital, Amritsar is "Excited Phase Schizophrenia". The cause of the disease is given as that the patient had studied upto 5th class and stopped education and started working at home. They were going to construct the house, but due to Isvokog (lack of ?) money, they would not do proper construction and the patient felt too much and came under the mental illness. He started saying that he met short of Rs.20/-. It was also opined that the patient was not taking medicine regularly. In the papers also the next friend of Om Parkash is shown as Lakshmi Devi, neither his wife or his son. None from the family of Om Parkash got him admitted in the hospital and later on Lakshmi Devi brought Om Parkash on Parole on 26.5.1980 and thereafter Om Parkash was never taken to Mental Hospital. No doctor either from the Mental Hospital or from the Civil Hospital, Sangrur has been examined by the defendant. Only the records from the hospital have been produced and the witness proving the record said that he did not know Lakshmi Devi nor he had ever seen Lakshmi Devi. Except that the patient Om Parkash came back from Mental Hospital on 26.5.1980 and never returned to the hospital, there is no evidence that he was of unsound mind. It has been admitted by Lakshmi Devi that Om Parkash had been under treatment regularly from the various Doctors, but she did not produce any prescription slip. The mental condition of Om Parkash, which was prevailing in 1980 has not been shown to the same at the time of execution of agreement or at the time of filing of the suit. Lakshmi Devi had taken a specific plea that Om Parkash was of unsound mind and it was for her to prove that after 1980, Om Parkash continues to be in the same condition.

6. The District Judge placed reliance on a judgment of this Court in the case of Rajinder Kaur v. Mangal Singh and Ors. (1987)91 P.L.R. 444 and observed that

even if a man is suffering from schizophrenia, in the absence of a positive statement made by a doctor that he was treating a person of unsound mind, it cannot be treated that such a person was lunatic. In other words the conclusion drawn is that merely a proof that a person long ago at one stage of his life suffered from schizophrenia would not result into an inference that he is a person of unsound mind.

7. The District Judge also adversely commented upon the conduct of the defendant-appellant Lakshmi Devi by observing as under:-

13. Apart from the plea of the defendant Lakshmi Devi that Om Parkash was of unsound mind, her conduct also goes to show that she wants to avoid the agreement on one pretext or the other and to perpetuate her possession over the suit property, which she has agreed to vacate at the time of registration of sale deed. She has first denied her signatures on the agreement Ex.P4, she further stated that she did not know how to sign, but later on she admitted that she had executed a power of attorney in favour of her counsel Shri R.K.Paul, Advocate. She further stated that agreement Ex.P4 might be bearing her signatures but the same might have been obtained on blank papers. The wife of Om Parkash also appeared in evidence as DW2. She stated that the prescription slips pertaining to Om Parkash have been destroyed. She admitted that she was brought by Lakshmi Devi to make a statement in the case.

8. Mr. R.L.Garg, learned counsel for the defendant-appellant has argued that under Order XXXII Rule 15, it is mandatory for the Court to hold an enquiry once a plea has been raised in the written statement by any of the defendants as to whether a person is incapable by reason of any mental infirmity of protecting his own interest if he has been sued or suing. In such a situation all the Rules 1 to 14 except Rule 2A of Order XXXII, which are applicable to the minors, would also mutatis mutandis apply to the person of unsound mind, if he is involved in a civil proceedings. In support of his submission, learned counsel has placed reliance on the judgments of this Court in the case of Asha Rani Vs. Amrat Lal, and Harjinder Singh v. Nachhattar Kaur and Ors. 1991 P.L.J. 565. He has also placed reliance on a judgment of Kerala High Court in the case of Syed Hassan Baffakki Thangal and Others Vs. Kalliath Thazha Chirutha and Others, and a judgment of Madras High Court in the case of S. Chattanatha Karayalar Vs. Vaikuntarama Karayalar and Another, . Learned counsel has then submitted that the Supreme Court in Ram Chandra Arya Vs. Man Singh and Another, , has also taken the view that no decree against a lunatic without appointment of a guardian in accordance with the principles laid down in Order XXXII Rules 1 to 4 could be passed. According to the learned counsel as no guardian was appointed by the trial Court to hold an enquiry, no decree by the District Judge could have been passed.

9. Mr. Arihant Jain, learned counsel for the plaintiff-respondent No. 1 has submitted that it is one thing to be a lunatic or a person of unsound mind and it is quite another thing if it has been proved as a fact. According to the learned counsel unless it is proved on record that a person who is a party to the litigation

is of unsound mind or a lunatic no presumption as such can be raised. According to the learned counsel the finding of the learned District Judge is that Om Parkash was found to be suffering from schizophrenia in the year 1980, on the basis of medical reports from the Mental Hospital, Am-ritsar, where he was treated. Thereafter, he was discharged and had started living at Sangrur. Learned counsel has maintained that there is no evidence on record showing that after recovery he ever suffered from any schizophrenic attack. He has then argued that a person who is suffering from schizophrenia, does not necessarily mean that he is a person of unsound mind or a lunatic, inasmuch as, no presumption could be raised to the effect that there is mental derailment for the whole time of such a decree that he was unable to have any mental capacity in between. In support of his argument learned counsel has placed reliance on a judgment of this Court in the case of *Bimla v. Baldev Raj* 1987 (Vol.XI) Marriage Law Journal 1.

10. The only question which requires determination in this case is whether there is sufficient evidence on record to prove that Om Parkash, defendant-respondent No.4, could be considered as a person of unsound mind on the date of execution of the agreement to sell, dated 26.10.1994 and when the suit was filed on 9.4.1996. Another question, which would require determination is whether the Court should have undertaken an enquiry by virtue of Order XXXII Rule 15 of the Code, as to whether Om Parkash was incapable of protecting his interest by reason of any mental infirmity in the instant suit.

11. At this stage it would be appropriate to make a reference to Order XXXII Rule 15 and the same reads as under-

ORDER XXXII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND 1 to 14. xxx
xxx xxx xxx

15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind: Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

A perusal of the aforementioned provision reveals that once a person is found to be of unsound mind either before the filing of the suit or during the pendency of the suit then all the Rules 1 to 14 were to apply in such a case. In other words the rules 1 to 14; which deal with the litigation pertaining to minor would ipso facto applicable to the case of persons of unsound mind, provided the Court has adjudged by the process of adjudication that such a person is of unsound mind. The other part of Rule 15 further shows that in the absence of adjudication by the Court, Rules 1 to 14 would apply where a person on enquiry by the Court has been found to be incapable by reason of any mental infirmity of protecting his

interest in a litigation.

12. The learned District Judge has referred to an order dated 11.4.1980 passed by the Sub Divisional Magistrate in which a direction has been issued that Om Parkash, defendant-respondent No. 4, be taken to Mental Hospital, Amritsar. The aforementioned order is based on a certificate issued by Dr. Dalbir Singh, Senior Medical Officer, Civil Hospital Sangrur, who had opined that patient seemed to be of unsound mind. Accordingly, he had recommended sending him to Mental Hospital, Amritsar. The diagnosis by Mental Hospital, Amritsar is "Excited Phase Schizophrenia". The cause of the disease has been found to be that when Om Parkash, defendant-respondent No. 4, was constructing the house, a proper construction could not be raised on account of inadequate funds. He was educated upto Class 5th and was working at home only. The improper construction of house for want of funds caused mental illness and he started uttering absurd sentences like that he met shortage of Rs.20/-. It was also opined that the patient was not taking medicines regularly at that time. The record of the Mental Hospital, Amritsar shows that he had reached Amritsar through his next friend Lakshmi Devi, defendant-appellant, not through his wife or his son. Later Om Parkash was brought on parole on 26.5.1980 and thereafter he had never been taken to Amritsar. No doctor has been examined from the Mental Hospital, Amritsar, or Civil Hospital, Sangrur. There is no evidence on record showing that after 1980 he has suffered from any mental illness. Therefore, it cannot be concluded that after returning from Mental Hospital, Amritsar, he continued to suffer from "Excited Phase Schizophrenia". In these circumstances it cannot be concluded that defendant-respondent No. 4 Om Parkash suffered from such a mental disorder that he could be regarded as a person of unsound mind or a lunatic or an idiot within the meaning of Order XXXII Rule 15 of the Code after 14 years when the executed agreement to sell on 26.10.1994.

13. In matrimonial cases the question of mental disorder has been considered. In the case of Ram Narain Gupta Vs. Rameshwari Gupta, , the wife who was suffering from mental disorder - Schizophrenia, could not be held to be lunatic or that the petitioner was reasonably expected to live with the respondent. Commenting on the expression "Schizophrenia" their Lordships of the Supreme Court has observed as under:-

25. "Schizophrenia", it is true, is said to be difficult mental affliction. It is said to be insidious in its onset and has hereditary predisposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality, In paranoid state, the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions.

26. "Schizophrenia" is described thus:

A severe mental disorder (or group of disorders) characterized by a disintegration of the process of thinking, of contact with reality and of emotional (especially of voices) are usual features and the patient usually feels that his thoughts, sensations and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of schizophrenia are simple, in which increasing social withdrawal and personal ineffectiveness are the major changes; hebephrenic, which starts in adolescence or young adulthood (see hebephrenia); paranoid, characterized by prominent delusion; and catatonic, with marked motor disturbances (see catatonia).

Schizophrenia commonly - but not inevitably - runs a progressive course. The prognosis has been improved in recent years with drugs such as phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causation and environmental stress can precipitate illness.

27. But the point to note and emphasise is that the personality disintegration that characterizes this illness may be of varying degrees. Not all schizophrenics are characterized by the same intensity of the disease. F.C. Redlich and Daniel X. Freedman in "The Theory and Practice of Psychiatry" (1966 edn.) say:

Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living...(p.252)

Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity....

(emphasis supplied)

It has further been held in the Ram Narain Gupta's case (supra) that unsoundness of mind as used in Section 13(1)(iii) of the Hindu Marriage Act, 1955, require the assessment of the degree of the mental disorder and all mental abnormalities are not recognized as ground for grant of a decree of divorce. The Supreme Court also, shared the concern of the medical world (world ?) against too readily reducing a human being into a functional nonentity and as a negative unit in family or society by observing that it is the concern of law as well which has been recognized by Section 13(1)(iii).

14. I am further of the view that Section 12 of the Contract Act, 1872, also does not go to the extent of declaring a contract void, if at the time of making the contract he was capable of understanding the contract and forming a rational

judgment as to its effect upon his interest. It has further been provided that a person who is usually of a unsound mind but occasionally of sound mind may enter into a contract when he is of sound mind. It is also well settled that burden of proof lies on a party who sets up a plea of unsound mind so as to get a declaration that the contract is void. Section 12 of the Indian Contract Act, 1872, reads as under:-

12. What is a sound mind for the purposes of contracting.- A person is said to be of sound mind for the purposes of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as its effect on his interests, cannot contract whilst such delirium of drunkenness lasts."

The aforementioned provision fell for consideration of the Supreme Court in the case of Sona Bala Bora and Others Vs. Jyotirindra Bhattacharjee, . It has been held that a person who is incapable of judging the consequences of his act, is a person of unsound mind and he does not act to be a lunatic. The fact of unsound mind does not require to be proved only by medical, evidence and the same can be proved by conduct also. The burden of proof lies on the party who sets up such a plea. Such a burden can be considered to be discharged by proving at least by balance of probability that the action of executing the deed of transfer was the outcome of an unsound mind.

15. If the facts of the present case are examined in the light of principles laid down in the judgment of Supreme Court in Sana Bala Bora's case (supra), it becomes evident that the evidence on record has been produced, which belong to the year 1980 and the Mental Hospital, Amritsar, had discharged Om Parkash, defendant-respondent No. 4 on parole. The presumption would be that he was released from mental hospital only when he had recovered and that he continued to be mentally fit. Moreover a period of fourteen years has intervened which further support the presumption of good mental health. No evidence has been furnished showing that either in 1994 when the agreement was executed nor in 1996 when the suit was filed, defendant-respondent No. 4 Om Parkash was suffering from any such affliction so as to conclude that he was unable to understand the consequences of his act of executing an agreement to sell his

house along with other co-sharers. Even the proceedings have been allowed to go ex parte by defendant-respondent Nos. 2 and 3 namely Sant Ram Chatwala and Simla Devi. No effort has been made to produce any evidence whether the disease of "Excited Phase Schizophrenia" continued 14 years later or 16 years later when agreement to sell was entered into or the suit was filed. Therefore, I am inclined to accept the findings recorded by the learned District Judge.

16. The question then is whether there is an obligation cast on the Court to hold any enquiry with regard to unsoundness of mind of Om Parkash. The aforementioned question can be answered by reference to the judgment in the case of Syed Hassan Baffakki Thangal (supra), on which reliance has been placed by the learned counsel for the defendant-appellant. In that case a plaint was presented by a next friend in the name of a person of unsound mind. It was held that the Court was not to accept the plaint filed by a next friend without conducting an enquiry in accordance with the provisions of Order XXXII Rule 15 of the Code. The reasons are obvious, the Court cannot firstly allow a next friend to plead that plaintiff is a lunatic and deal with his property. Secondly, the public policy would require that a person who is portrayed as lunatic should prima facie be shown as such. Similar view has been expressed in other judgments in the cases of Asha Ram (supra), Harjinder Singh (supra), S. Chattantha Karayalar (supra) and Ram Chandra (supra). It is, thus, obvious that none of those judgments would be relevant to the facts of the present case because defendant-appellant, who alone has appeared to contest the suit, filed by the plaintiff-respondent No. 1, has produced on record ample evidence showing that defendant-respondent No. 4 Om Parkash had suffered "Excited Phase Schizophrenia" in the year 1980, thereafter he was released on parole by the Mental Hospital, Amritsar. After a period of 14 years, defendant-respondent No. 4 along with three others had entered into an agreement and after 16 years a suit has been filed against him. There is not even a medical prescription on record showing that during all these years he had ever suffered the disease of Schizophrenia again and, therefore, it cannot be concluded that in these facts and circumstances the Court has not conducted an enquiry as envisaged by Order XXXII Rule 15 of the Code. Therefore, the argument raised by the learned counsel for the defendant-appellant is devoid of merit and thus, liable to be dismissed.

For the reasons mentioned, this appeal fails and the same is dismissed.