
(1993) 03 MP CK 0026
In the Madhya Pradesh High Court
Case No : C.R. No. 172 of 1990

Nathmal Maheshwari

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-03-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 9 Rule 4, Order 9 Rule 9, 141, 151
Land Acquisition Act, 1894 — Section 18, 21

Citation : (1993) ILR (MP) 302 : (1994) 39 MPLJ 162 : (1994) MPLJ 162

Hon'ble Judges : R.P. Awasthy, J

Bench : Single Bench

Advocate : R.P. Jain, for the Appellant; G.C. Jain, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.P. Awasthy, J.

These Civil Revision Nos. 172/90 and 176/90 are being disposed of by this order as similar questions of law and fact are involved in both of the said revisions.

The petitioners in both of the revisions have filed the present revision petition against the orders dated 25-1-1989 and 5-1-1990 passed in M.J.C. Nos. 12 and 14 of 1983 of the Court of 1st Addl. Judge to the Court of District Judge, Chhindwara. By virtue of the order dated 5-1-1990, the learned Addl. District Judge to the Court of District Judge, Chhindwara held that in the relevant cases the matter was heard in absence of the parties and was decided on the basis of their merits and therefore, provisions contained under Order 9, CPC do not apply in such cases. As the order was passed on the basis of merits of the cases only revision or appeal as the case may be, could be filed against the said order. The said Court further held that the provisions contained under Order 9, CPC were not applicable to the proceedings instituted under the provisions of Land Acquisition Act.

It has been contended for the petitioners that since the petitioners were not present on the relevant date, the case could not have been decided on its merits and could only have been dismissed in absence of the parties concerned or could have been dismissed for want of prosecution. Therefore, the provisions contained under Order 17, Rule 2 read with the provision contained in Order 9, Rule 4 or 9 were applicable in the present case.

After the amendment of Section 141 of the CPC in the year 1976 and in view of the pronouncement by the Division Bench of our own High Court reported in State of Madhya Pradesh Vs. Smt. Jambai and Others, , the provisions of Order 9 of CPC were made applicable to the proceedings pending in any Court of Civil jurisdiction. Consequently, in the present case, the reasoning given by the learned Addl. District Judge to the effect that the provisions contained in Order 9 were not applicable to the present case is obviously erroneous and deserves to be set aside.

In reply, it has been submitted by the State that in absence of the petitioner at whose instance a reference was made to the Civil Court, the Civil Court was constrained to make and was left with no option but to pass an order on the basis of the merits of the case. Therefore, the relevant order was passed on the basis of the merits of the case. Consequently, placing reliance on Rajendra Kumar v. Collector, Raipur 1979 MPLJ SN 56, the learned Judge did not commit any error in passing the said order on the basis of merits of the case. As the said order was passed on the basis of the merits of the case, the remedy of the present petitioners was either to file an appeal u/s 54 of the Act or by a revision u/s 115 of the Code of Civil Procedure. The petition filed u/s 151, CPC for restoration of the case was not competent. The said view is supported by the authority reported in Collector, Raipur v. Rajmani 1983 MPLJ SN 12.

In my opinion, this revision-petition deserves to be allowed. In the reporting of Division Bench Authority reported in Rajendra Kumar v. Collector, Raipur 1979 MPLJ SN 56, the full facts of the case have not been detailed in the said short note. It is very much possible that in the referred Authority the facts might have been that the claimant at whose instance a reference was made had already led evidence. Under the said circumstances, it was ordered that the judgment of the Court can be based on oral evidence also and there is no rule that in the absence of documentary evidence on the question of market price, a finding regarding that aspect cannot be given. Under the said circumstance, it was further observed that the Court is bound to determine compensation and make an award even if the person at whose instance the reference is made, does not appear. It was further observed that the Court was not bound to accept the statement of witness only because he was not effectively cross-examined or evidence was not produced.

Thus, the said Authority does not lay down as a principle of law that whenever a claimant at whose instance a reference is made, remains absent, a judgment or order on the basis of merits of the case should invariably be passed and no

adjournment can be granted or the case cannot be dismissed under Rule 2 of Order 17, CPC for want of prosecution or in default of the said claimant.

It has further to be seen that as per provision contained in Section 141, CPC the procedure provided in the Code in regard to suits should be followed, as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction. Consequently, in case of absence of the claimant at whose instance the reference was made, under the circumstance of the present case only an action under Order 17, Rule 2, Civil Procedure Code, could have been taken by dismissing the claim of the claimant in his default.

There was some conflict of opinion regarding aspect as to whether the word "proceedings" mentioned in Section 141, CPC includes proceedings under Order 9 or not. The said controversy has been put at rest by making amendment of Section 141, CPC and explaining that the proceeding includes a proceeding under Order 9 of Civil Procedure Code. Therefore, it is clear that the provisions contained in Order 9, CPC would be applicable to all proceedings in any Court of Civil jurisdiction. This view is supported by the Division Bench Authority of our High Court which has been reported in *State of M. P. v. Jambai* (supra).

In the result, the present revision-petitions are allowed and the cases are remitted back to the Court concerned for deciding the petition filed under Order 9, Rule 4 or 9 read with Section 151, Civil Procedure Code. That is to say the cases are remitted for determining as to whether there was sufficient cause for non-appearance of the petitioners in the Court concerned on 25-11-1989.

Looking to the facts and circumstances of the case, it is ordered that the parties to the case shall bear their own costs.

The petitioners in both of the said cases and the respondent through its counsel are directed to make appearance in the Court concerned on 7-4-1993.

As the parties to the case have been directed to appear in the Court concerned, a certified copy of this order be issued to both the parties on payment of requisite copying fees.