
(2001) 04 OHC CK 0035
In the Orissa High Court
Case No : A.H.O. No. 47 of 2000

Orissa State Civil Supplies Corporation Ltd.

APPELLANT

Vs

Janardan Samal

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1(2), Order 9 Rule 9

Citation : (2001) 92 CLT 554

Hon'ble Judges : N.Y. Hanumanthappa, C.J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This Letter Patent Appeal has been filed against the order dated 25-2-2000 passed by the learned Single Judge in Misc. Appeal No. 67 of 1994 confirming the order dated 3-11-1993 passed by the learned Subordinate Judge, Sundargarh in Misc. Case No. 45 of 1991.

2. Heard the learned counsel for the parties.

3. The duty of the court is to see that the claim of a party is not thrown out on the ground of technicality but substantial justice is done to him. In the case in hand, learned counsel for the plaintiff-appellant was not present on 20-9-1991 on which date the suit was posted for hearing it is further submitted that although learned counsel for the plaintiff-appellant filed a petition for adjournment on 19-9-1991 i.e. one day ahead of the date fixed, the trial court rejected the petition for adjournment of the case, which resulted in dismissal of the suit. The appellant filed Misc. Appeal No. 67 of 1994 before this Court. Learned Single Judge after taking into consideration the provisions of Order 17, Rule 1(2)(c), C. P. C. rejected the appellant's request to restore the suit. Hence this appeal.

4. Money Suit No. 3 of 1984 was filed by the appellant for realisation of Rs. 6,40,370/-. The suit was filed on 3-3-1984 and was ready for hearing on

5-2-1990. The same was dismissed for default on 20-9-1991. It is further submitted that one more chance should be given to restore the suit. Hence we feel it proper to set aside the order dated 3-11-1993 passed by the learned Subordinate Judge, Sundargarh as well as the order passed by the learned Single Judge in Misc. Appeal No. 67 of 1994 and restore the Money Suit. We would have dismissed this appeal also, but considering the persuasion of Mr. S. Misra and status of the appellant, this appeal allowed and appellant is directed to pay a cost of Rs. 6000/- to Mr. S. N. Satpatby, learned counsel for the respondent which shall be paid by the Corporation within four weeks.

5. Both the parties are directed to appear before trial court with their witnesses and other evidence, if any, on 20-6-2001 at 10.30 a. m. positively without awaiting for any notice from the trial court.

6. The plaintiff-appellant is directed to proceed with the case without seeking any adjournment. It is also made clear that the trial court shall not adjourn the case on the request made by any of the parties.

7. The trial court is also directed to dispose of the suit by the end of September, 2001. Office is directed to send back the L. C. R. to the trial court forthwith,

8. Urgent certified copy of the order be given on proper application.

9. A.H.O. allowed.