
(2004) 09 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 405 of 2004

Shri Sharda Prabandhak Samiti, Maihar and another

APPELLANT

Vs

Indrasen Jali

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2004) 4 MPLJ 537

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : A.K. Tiwari, for the Appellant; A.G. Dhande with Sudeep Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

This appeal arises out of order dated 12-11-2003 passed by First Additional District Judge, Satna in M.J.C. No. 9/2003 rejecting the appellants application under Order 9, Rule 13 of the Code of Civil Procedure.

Briefly stated, the respondent filed a civil suit bearing No. 3-B/2000 against the appellants on 5-1-1999. The appellants remained absent and as such the trial Court proceeded ex parte. After recording the evidence of the respondent the trial Court decreed the suit on 23-4-2003.

On 13-10-2003 the appellants filed an application under Order 9, Rule 13 of the Code of Civil Procedure. The respondent opposed the application by filing reply. The trial Court after hearing the parties dismissed the application by its order dated 12-11-2003. It is this order which is under challenge.

Shri A.K. Tiwari, learned counsel for the appellants has contended that the appellants had no notice of the suit and in the absence of service of summon the judgment and decree is not sustainable and as such ought to have been set aside

by the trial Court. He further prayed that, in the interest of justice a liberal approach be adopted and the appellants be granted opportunity to contest the suit on merits.

Shri A.G. Dhande, learned senior counsel for the respondent has contended that the appellants ground is incorrect in fact they were duly served with the summons of the suit. After service of summon on the appellant No. 1 nobody appeared for them. Thereafter when the summon was served on appellant No. 2, counsel for the appellant No. 2 appeared in the proceedings sought time to file written statement on various dates. Ultimately, since no written statement was filed, the trial Court closed the right to file written statement. Thereafter the appellant No. 2 did not appear and as such the trial Court proceeded ex parte. In the aforesaid premises, he submitted that since the appellants were at fault, the trial Court has rightly proceeded ex parte against them. The application under Order 9, Rule 13 of the CPC has also rightly been dismissed.

On considering the rival submissions of the counsel for the parties and after perusal of the record of the trial Court, I am of the opinion that this appeal is of no merit and deserves to be dismissed.

The suit was filed on 5-1-1999. On 20-1-1999 notices were issued to the appellants. On 11-5-1999 in spite of service of summon, the appellant No. 1, remained absent. The case was thereafter adjourned from time to time for service of summon on the appellant No. 2. The summon was ultimately served on appellant No. 2 on 31-7-2000. On 24-8-2000 Shri H.C. Shrivastava, Advocate appeared for appellant No. 2. He was directed by the trial Court to file written statement. Again on 11-10-2000 he sought time to file written statement. The case was adjourned from time to time for filing written statement on various dates. Ultimately on 17-3-2001 last opportunity was given to file written statement. It was made clear in the order sheet dated 17-3-2001 that in case the written statement is not filed on the next date the Court shall proceed under Order 8, Rule 10 of the Civil Procedure Code. Thereafter again on 3-4-2001, time to file written statement was granted imposing cost of Rs. 100/- on the appellant No. 2. On 28-4-2001 the right to file written statement was closed and the case was fixed for recording ex parte evidence. On 31-1-2003 respondent's/plaintiff's evidence was recorded and on 22-4-2003 the respondent/plaintiff closed his evidence. On 23-4-2003 the judgment was pronounced and the suit was decreed.

In view of the aforesaid factual matrix, the plea, that the appellants had no notice of suit is against the record and cannot be accepted. The appellant No. 1 though served did not appear. The appellant No. 2 after service of summon though appeared and participated in the proceedings, did not file written statement in spite of repeated opportunities.

The plea of the appellants having not received the summons demolishes from a further important fact revealed from the record that on 17-3-2001 an application was filed on behalf of the appellants signed by Sub Divisional Officer and Chief

Executive Officer of the appellant/committee, seeking time upto 4-4-2001 for filing written statement. However as observed earlier the written statement was not filed.

The aforesaid facts and circumstances clearly indicate that the cause assigned by the appellants for setting aside ex parte judgment and decree is against the facts available on record. The summons were duly served, the appellants also filed an application seeking time to file written statement in this background the contention of non-service of summons cannot be accepted.

So far as prayer for liberal approach, suffice is to say that liberal approach does not mean that the appellants who though served had any licence to disappear or to appear as per their wishes to suit their comfort or convenience. In my opinion looking to the plea taken by the appellants which is against the record of the trial Court, no case is made out to accept the prayer.

Accordingly, this appeal is dismissed. No orders as to cost.