

(2000) 08 MP CK 0121
In the Madhya Pradesh High Court
Case No : First Appeal No. 10 of 1991

State of M.P. and Others

APPELLANT

Vs

Madan Singh

RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 8 Rule 1, Order 8 Rule 1(1), Order 8 Rule 10

Citation : (2002) 1 JLJ 174 : (2001) 3 MPLJ 10

Hon'ble Judges : N.G. Karambelkar, J; Fakhruddin, J

Bench : Division Bench

Advocate : K.B. Chaturvedi, for the Appellant;

Judgement

N.G. Karambelkar, J.

Appellant-Defendants have preferred this appeal against the judgment and decree dated 16.10.1990 passed in Civil Suit No. 37A/90 by Fourth Additional District Judge, Gwalior, decreeing Respondent-Plaintiff's suit for damages.

The Respondent did not appear in this Court despite service of notice by publication.

In appeal, the impugned judgment and decree has been assailed mainly on the ground that the learned trial Court committed illegality by not properly exercising its power under Order 8 Rule 10, CPC in not permitting the Appellants to file written statement and thereby forfeiting their right to file written statement, and thereby deprived the Appellants from properly defending their claim. The findings on merit have also been assailed on the ground that those are not based on any legal evidence.

We have heard learned Counsel for Appellants and perused the record.

Briefly stated, it is borne out from the record that Respondent instituted his suit in July, 1987 as an indigent person under Order 33 Rule 1, CPC which was

registered as Miscellaneous Case No. 6/88. The enquiry under Order 33, CPC continued till 2.5.1989 when by its order, learned trial Court refused Respondent-Plaintiff's prayer for permission to sue as an indigent person and directed him to pay Court-fees. Respondent-Plaintiff was allowed time to pay Court-fees till 10.7.1989. It is found that Court-fees was not paid and instead the Respondent-Plaintiff challenged trial Court's order by way of revision in the Hon'ble High Court. The High Court vide its order dated 10.1.1990 passed in Misc. Appeal No. 56/90, quashed trial Court's order and remanded the matter back for rehearing and disposal afresh. It is found that order of the High Court and the original record were received in the trial Court on 18.1.1990. On that day itself, the matter was taken up for hearing when the two sides made statement that they did not want to produce any further evidence and after hearing the two sides, application was allowed permitting the Respondent-Plaintiff to sue as indigent person. It is to be noted that even after this, the suit was not registered as a regular suit. This mistake was noticed by learned trial Court on 16.10.1990 while delivering the judgment. Assuming for arguments sake that regular suit was registered on 18.1.1990, it would appear that the Court on 18.1.1990 allowed time to Appellants to file written statement till 23.1.1990. It would be proper to reproduce order sheet dated 18.1.1990 :

vkosnd lfgr Jh , - , e- ukbZd] vf/koDrk

vukosnd }kjk , l- , e- , - uooh] vfr- ?kl- vf/koDrk

ewy izdj.k ekuuh; mPp U;k;ky; ls izkIr gqvk A mHk; i{k us vkns? 33 fu;e 1 O;ogkj izf?;k lafgrk ds vkosnu ij vkSj dksbZ lk{; u nsuk tkfgj fd;k

cgl lquh xbZ

vkns? gLrk{kfjr rFkk fnukafdr dj [kqys U;k;ky; esa iznku fd;k x;k

vkt Hkh tokc nkok izLrqwr ugha fd;k x;k

okLrs tokc nkok 23-1-1990 dks is? gks

On 23.1.1990, the Appellant-Defendants did not file written statement, and therefore, the Court forfeited their right to file written statement on the ground that they failed to file written statement despite a number of opportunities having been given in the past.

It is found that the trial Court, while passing orders on 23.1.1990, was misled and acted on a wrong impression that many opportunities were granted for filing written statement. It is true that the Court below right from 3.11.1989 asked the Appellant-Defendants to file written statement and it continued till 18.1.1990. This important legal aspect appears to have been missed by learned trial Court that the Defendants were not required to file written statement till there was a regular suit in existence. There was no legal propriety in asking the Defendants to file written statement during the pendency of enquiry under Order 33, Code of Civil Procedure. The enquiry concluded on 2.5.1989 when the Court refused

permission to sue as an indigent person. The Plaintiff having not paid Court-fees in compliance of the order dated 2.5.1989, regular suit was not registered and could not have been registered. This position continued till 10.1.1990 when trial Court's order was quashed by High Court and till 18.1.1990 when trial Court permitted Plaintiff to sue as indigent person. In this view of the matter, there was no occasion for Defendants to file written statement nor the trial Court was legally competent to ask them to file written statement, and therefore, their failure to file written statement prior to 18.1.1990 was insignificant in the eyes of law. It is, thus, evident that virtually Defendants were allowed hardly five days' time to file written statement after 18.1.1990 and the right to file written statement was forfeited on 23.1.1990 under the impression that much time has already been allowed in the past for the same purpose. It is to be noted that provision of Sub-rule (1) of Rule 1 of Order 8, CPC has to be worked in a manner so as to advance justice. It is not intended to be so operated as to punish the defaulting Defendant for his omission. *Mehar Chand Vs. Suraj Bhan and Others*, and *Hansdeo Singh Vs. Ghura Singh and Another*, . In the facts and circumstances of the instant case, we do not find that learned trial Court exercised its discretion in a judicious manner in refusing the time to file written statement and in forfeiting Defendants' right to file written statement. It is again to be noted that the Appellant Defendants did file written statement on 23.3.1990 and requested the Court that it be taken on record. However, learned Court rejected Defendants' application vide its detailed order dated 11.5.1990. A perusal of the order shows that the trial Court took it seriously that a number of opportunities were granted to file written statement in the past before forfeiting their right on 23.1.1990. It appears that the learned trial Court again failed to notice that the suit was at initial stage on 23.3.1990 because till then Plaintiff-Respondent had produced no evidence and in that circumstance the written statement could have been taken on record keeping in mind the explanation given by Defendants for the delay in filing written statement.

As discussed above, we find that the approach of learned trial Court in exercising its power under Rules 1 and 10 of Order 8, CPC was manifestly illegal. It is found that in the facts and circumstances of the case, only one opportunity of 5 days was afforded to Appellant-Defendants to file written statement, which in our considered opinion was not sufficient. We, are, therefore, of the opinion that learned trial Court deprived Appellant Defendants from properly defending their case by illegally forfeiting their right to file written statement and further by refusing to take written statement on record and this has certainly prejudiced the case of the Defendants. The Defendants having not been allowed to file written statement and have virtually been denied the right to defend the case and on this count alone, the judgment and decree under challenge deserves to be set aside. The Defendants ought to be allowed and afforded reasonable opportunity to defend their case after filing written statement.

In the result, impugned judgment and decree of the learned trial Court is set aside and matter is remanded for fresh trial. The learned trial Court shall now

lake written statement on record and decide the suit in accordance with law.
The Court-fees be refunded.