
(1997) 01 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : C.R.No. 90 of 1996

Tulsi Das

APPELLANT

Vs

Safia Begum

RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 5 Rule 17, Order 9 Rule 13

Citation : (1997) KashLJ 116 : (1997) SriLJ 268

Hon'ble Judges : B.A.Nazki, J

Bench : Single Bench

Advocate : S.D.Sharma, G.N.Wani, Advocates appearing for the Parties

Judgement

1. Suit was decreed in exparte by the trial court and during execution proceedings an application was made under Order 9 Rule 13 for setting

aside the exparte decree. The case of the petitioner before the Trial Court was that he had no knowledge of the suit and he only came to know

about the pendency of the execution proceedings when the Nazir of the court came to his house, in his absence, for execution of the decree.

2. Evidence was led by the parties before the Trial Court and on the basis of the evidence the trial court came to the conclusion that the

defendantpresent petitioner had the knowledge of the suit and in terms of Order 5 Rule 17 of Civil Procedure Code, defendant had been served.

3. Since the trial court, on appreciation of evidence, led by the parties, has arrived at a conclusion that the defendant had knowledge of pendency

of the suit, therefore, I have no option, in this revision petition, but to accept the conclusions arrived at by the trial court.

4. The only ground agitated by the petitioner before this Court needed some consideration that while serving the defendant the trial court has not

followed the procedure as laid down in Order 5 of Civil Procedure Code. He submits that the copy of the plaint was not accompanied with the summons with the issuance of summons the defendant had not been served through registered post. He has relied, in this connection, on a judgment of this Court reported in KLJ1990 Page 26.

5. Mr. Wani appearing for the respondent, states that the question before this Court is whether the application under Order 9 Rule 13 of C.P.C has been decided rightly or not, by the trial court.

6. Second proviso to rule 13 C.P.C limits the power of the court by laying down, ""Provided further that no court shall set aside a decree passed exparte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer plaintiffs's claims.

7. Since the trial court, on the basis of evidence, has come to a conclusion that the defendant/petitioner herein had notice of the pendency of the case, therefore, even if there is any irregularity in the summoning of the defendant it cannot be a ground for setting aside an exparte decree. For invoking the jurisdiction of the court under Order 9 Rule 13 C.P.C, it will not be sufficient for the aggrieved party to show that he had not been summoned or served in the manner provided under Order 5 C.P.C but he had to further show that he had no notice of the date of hearing.

8. In view of the proviso to Rule 13 of Order 9 C.P.C, I do not find any merit in this revision petition and no interference is needed in the order passed by the trial court, therefore, this revision petition is dismissed.

9. No order as to costs.