
(2012) 02 AHC CK 0215

In the Allahabad High Court

Case No : Miscellaneous Single No. 3482 of 2009

Ursh Mohammad

APPELLANT

Vs

Additional District Judge Pratapgarh

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

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

Citation : (2012) 02 AHC CK 0215

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

Rajiv Sharma, J.

Heard learned counsel for the parties.

Brief facts giving rise to the instant writ petition are that a suit for permanent injunction has been filed by Tauheed Khan and others against the petitioners on 12.5.1981. The said Suit was decided ex parte against the defendantspetitioners vide order dated 26.7.1984. Thereafter, the petitioners moved an application under Order 9 Rule 13 CPC alongwith an affidavit under Section 5 of Limitation Act which was dismissed vide order dated 21.1.1998. Being aggrieved, they filed Misc. Civil Appeal No. 69 of 1998 which too was dismissed vide order dated 18.5.2009. Feeling aggrieved, the instant writ petition has been filed.

Learned Counsel for the petitioners submits that on coming to know the ex parte decree, they moved an application under Order 9 Rule 13 CPC duly supported by an affidavit stating therein that as the service was not effected on them and as such, they were not aware of the proceedings. The said application was dismissed by the trial Court inter alia on the ground that the service has been affected on two defendants, namely, Mohd. Ajmal and Smt. Aisha Bibi and as such, the trial Court has deemed that the service has been affected on all the defendants. Though an appeal has been filed, the Appellate Authority, without looking into the facts and circumstances, dismissed the appeal.

On the other hand, learned Standing Counsel submits that since the service has been affected on two defendants, which is evident from the pleadings of the writ petition, the impugned orders have rightly been passed. Therefore, the writ petition is liable to be dismissed.

According to the office report dated 21.7.2010, the opposite party nos.1 and 2 are represented by the learned Chief Standing Counsel. Service of notice on opposite party nos.3 to 12 is deemed sufficient under Chapter VIII Rule 12 of the Allahabad High Court Rules, 1952.

According to the provisions of Order 5 Rule 11 CPC, save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant. Admittedly, service has not been affected personally on all the defendants. Therefore, in violation of the aforesaid provisions, the application under Order 9 Rule 13 CPC has been dismissed. As the Appellate Authority has simply affirmed the order passed by the Court below, the said order is liable to be quashed.

In view of above, the writ petition is allowed on payment of cost of Rs.5,000/ and the impugned orders dated 18.5.2009 passed in Civil Misc. Appeal No. 69 of 1998 by the Additional District Judge, Pratapgarh and the order dated 21.1.1998 passed by the Civil Judge in Misc. Case No. 71 of 1991 and the ex parte judgment and decree dated 26.7.1984 passed in O.S. No.318 of 1981 are hereby set aside. Further, it is provided that the Civil Judge is directed to decide the Suit on merits, within a maximum period of one year, from the date of presentation of a certified copy of this order. Petitioners are directed to deposit the costs in the Registry of this Court within a period of two months from today and if the cost is deposited within the above stipulated period, Registrar is directed to transit the same to the Mediation and Conciliation Centre, Lucknow within a period of one week from the date of its receipt.