

(2011) 05 RAJ CK 0111
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3349 of 2008

Vadundhara Marble Industries	Vs	APPELLANT
Narendra Bairva and Another		RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7

Citation : (2011) 05 RAJ CK 0111

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—The application (IA No. 6035/2011) for early hearing as made by the Respondent No. 1 though contains some typographical errors but while ignoring such shortcomings, is considered and is allowed; and, having regard to the circumstances, the matter is taken up for consideration today itself.

2. The learned Counsel for the Respondent No. 1 at the outset candidly submits that the Petitioner may be permitted to participate in the proceedings in the civil suit and he does not intend to oppose this petition against the order dated 01.02.2008 whereby the learned Trial Court has rejected the application moved under Order IX Rule 7 CPC by the Petitioner.

3. The learned Counsel for the Respondent No. 1 appears right in not attempting to support the impugned order dated 01.02.2008 whereby the learned Trial Court proceeded to reject the prayer made on behalf of the Petitioner for setting aside ex parte proceedings. It appears that the learned Trial Court has taken too rigid a view of the matter while ignoring that the rules of procedure are essentially meant to ensure proper progress of the proceedings and to subserve the cause of justice. For some delay having been caused because of the faults and omissions of the Petitioner, the Plaintiff could have been compensated in terms of costs but declining altogether the prayer for opportunity to participate further in

the suit does not appear proper. The impugned order dated 01.02.2008 cannot be sustained.

4. However, it is noticed that on account of the fault and default on the part of the Petitioner, the matter got unnecessarily delayed. Hence, even while it appears appropriate to set aside the order impugned 01.02.2008 and to allow the Petitioner to participate in the suit proceedings but then, at the same time, it appears proper to put the Petitioner to terms and to make necessary observations for further progress of the matter.

5. Therefore, though the impugned order dated 01.02.2008 is set aside but the Petitioner shall be permitted to take part in the further proceedings in the civil suit on the condition of his making payment of costs in the sum of Rs. 1,000/- (Rupees one thousand) within a week from today. Upon making such payment of costs, the Petitioner shall be permitted to participate in the further proceedings in the suit and the written statement, said to have already been filed, shall be taken into consideration.

6. It shall, however, be expected of the learned Trial Court to proceed expeditiously with the civil suit curbing against unnecessary delay; and for that matter, if the Petitioner is found, by any act or omission, attempting to delay the progress of the suit, it shall be permissible for the learned Trial Court to pass appropriate orders and, if necessary, stern orders against the Petitioner.

7. With the observations and requirements aforesaid, this petition stands allowed to the extent indicated above.