

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.5455 of 2016
Date of Decision: 18.07.2017**

**Kashmir Ayurvedic WorksPetitioner
Vs
The Director Ayurveda, Yoga and Naturopathy and another
.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Himanshu Arora, Advocate
for the petitioner.

Mr. Ashwani Kumar Saini, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 27.04.2015 passed by Additional Civil Judge (Senior Division), Amritsar, whereby two applications filed by the defendants and plaintiff respectively under Order 37 Rule 4 CPC and under Order 37 Rule 2 read with Section 151 CPC were decided.

The application under Order 37 Rule 4 CPC filed by the defendants for treating the suit to be an ordinary suit was accepted, whereas the application filed under Order 37 Rule 2 read with Section 151 CPC for decreeing the suit was rejected.

Learned counsel for the petitioner by referring to **Sarwan Singh Vs. Jatinder Chaudhary, 2017(2) PLR 132** submitted that under Order 37 Rule 2 CPC, the summons of the

suit shall be in Form No.4 in Appendix B or in such other Form as may be prescribed from time to time. The defendant shall not defend the suit referred to in sub-Rule (1) unless he enters an appearance and in default of his entering an appearance, the allegations in the plaint shall be deemed to be admitted and as a consequent decree shall be passed. Under Order 37 Rule 3 CPC, in the event of service of summons upon the defendant under Rule 2 of Order 37 CPC in the prescribed form, the defendant may at any time within ten days of such service enter an appearance either in person or by a pleader and in either case, he shall file in Court an address for service of notice on him. If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summon for judgment in Form No.4-A in Appendix B or such other form as may be prescribed from time to time returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action, amount claimed and stating that in his belief, there is no defence to the suit. Further defendant at any time, within ten days from the service of such summons for judgment by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend the application on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally and upon such terms and conditions as may appear to the Court to be just and

proper.

Apparently, the procedure prescribed under Order 37 Rule 3 CPC and sub-Rules have to be complied with after compliance of Order 37 Rule 2 CPC and sub-Rules. The requirement of Order 37 Rule 2 CPC is that the summons of the suit shall be in Form No.4 in Appendix B. The failure of the defendant in entering appearance within ten days would have enabled the trial Court to pass a decree. The procedure prescribed in Order 37 Rule 3 CPC is somewhat different. Under this Rule, defendant on appearance at any time within ten days of such service shall file in Court an address for service of notice upon him. It is thereafter, the obligation on behalf of the plaintiff would start.

In the absence of any compliance under Order 37 Rule 3 CPC at the instance of defendants, there would be no obligation on the part of the plaintiff at this stage. The trial Court though admitted the non-compliance on the part of the defendants, but observed that both the plaintiff and defendants have not complied with the mandatory requirement of Order 37 Rule 3 CPC.

In my considered view the order passed in aforesaid premise is not legally sustainable. The plaintiff can only be obligated if there was a compliance of Order 37 Rule 3 CPC by

the defendants at the first instance. Since there was no compliance by the defendants, therefore, impugned order to that extent is not legally sustainable and it was the defendants who were at fault in not complying the mandatory requirement of Order 37 Rule 3 CPC.

In view of aforesaid, the suit ought not to have been treated to be ordinary suit. So far as, prayer of the plaintiff in terms of Order 37 Rule 2 CPC is concerned, since the defendants have other remedies even after non compliance of Order 37 Rule 3 CPC, therefore, no such prayer can be entertained on behalf of the plaintiff as well.

In view of aforesaid, this revision petition is partly accepted to the extent of not treating the suit under Order 37 CPC.

July 18, 2017.

Prince

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No