

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.757 of 2016
Date of Order: 10.08.2017

Mahender

..Petitioner

Versus

Makhtool and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kuldeep Singh, Advocate,
for the petitioner.

Mr. C.B.Goel, Advocate,
for respondent no.1.

Mr. Kapil Bansal, DAG, Haryana,
for respondent no.2.

ANIL KSHETARPAL, J.

At the outset, learned counsel for the respondent has pointed out that in fact appeal was maintainable against the order passed by the learned Additional District Judge, Panipat, remanding the case back to the trial Court, under Order 43 Rule 1(u) of the Code of Civil Procedure. There is substance in the objection of learned counsel for the respondent. However, the appeal would also be maintainable before this Court. In the interest of justice, the present revision petition is treated as appeal.

Plaintiff-respondent filed a suit for declaration and permanent injunction for declaring the relinquishment deed dated 03.07.2012 as illegal, null, void and not binding upon the plaintiff. The aforesaid suit was contested by the defendant.

The plaintiff neither led any evidence despite availing several

effective opportunities nor the cost levied by the Court was paid. The trial Court, thereafter, proceeded under Order 17 Rule 3 CPC and dismissed the suit as learned counsel for the defendant also made a statement that he does not want to lead any evidence on behalf of the defendant.

The plaintiff filed first appeal before the learned Additional District Judge, Panipat. Learned Additional District Judge, Panipat, had set aside the aforesaid order passed by the trial Court and remanded the case back to the trial Court for decision on merits after granting opportunities to the plaintiff and defendant to lead evidence. It had been ordered that not more than two opportunities will be granted to the plaintiff to conclude his entire evidence.

Learned first appellate Court has noticed that on the day the learned trial Court had passed the judgment, while exercising power under Order 17 Rule 3 CPC, learned counsel for the plaintiff had pleaded no instructions. The learned first appellate Court has held that once no instructions has been pleaded, it was incumbent on the Court to either issue notice to the plaintiff or dismiss the suit under Order 17 Rule 2 CPC.

Defendant-appellant has filed this appeal against the order passed by the learned Additional District Judge, Panipat.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below as well as the records.

The issue which requires determination is “What is the option left with the Court when the counsel pleads no instructions”. Order 17 Rule 2 and Order 17 Rule 3 of the Code of Civil Procedure are extracted as under:-

“Order 17 Rule 2 CPC:- Procedure if parties fail to appear on day fixed- *Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.*

[Explanation.- Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.]”

“Order 17 Rule 3 CPC:-Court may proceed notwithstanding either party fails to produce evidence, etc.- *Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default,-*

(a) if the parties are present, proceed to decide the suit forthwith; or

(b) if the parties are, or any of them is, absent, proceed under Rule 2.”

Order 17 Rule 3 CPC deals with situation when any party to a suit to whom time has been granted fails to produce his evidence or to cause

the attendance of his witnesses or to perform any other act necessary to the further progress of the suit.

Order 17 Rule 3(b) provides that if the parties or any of them is absent, the Court would proceed under Order 17 Rule 2 CPC. In the present case, counsel for the plaintiff suffered a statement on 20.10.2014 that he had no instructions from his client. In other words, counsel for the plaintiff pleaded no instructions. In such circumstances, in my considered opinion, the Court could not have proceeded with the case under Order 17 Rule 3 CPC. Once the counsel had made a statement pleading no instructions then the plaintiff cannot said to be represented in the civil suit on the day order was passed. Once no one was present, the trial Court ought to have proceeded under Order 17 Rule 2 CPC.

However, in the present case, the Court committed an error in proceeding under Order 17 Rule 3 CPC. In any case, the learned first appellate Court has exercised a discretion and granted opportunity to the plaintiff to prove its case.

There is no ground to interfere with the discretion exercised by the first appellate Court.

In view of the above, the order passed by the learned Additional District Judge, Panipat, is upheld and the appeal is dismissed.

August 10, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No