

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 27-8-2018

Judgment delivered on 12-10-2018

FA No. 128 of 2010

- Balvinder Singh Saini (Gaggi) s/o. Late Shri Sukhdeo Singh Saini, aged about 46 years, r/o. Ramniwas, New Shantinagar Raipur, Tahsil & District Raipur, CG.

---- Appellant

Versus

- Hariram Dewangan aged about 59 years S/o Late Ranjeet Ram Dewangan, R/o Near Manjhali Pond, Station Road, Champa, Distt.-Janjgir-Champa CG.

---- Respondent

For appellants : Mr. Kishore Bhaduri, Advocate.
For respondent : Mr. S.C. Verma, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 9-9-2010 passed by 10th Additional District Judge (FTC), Raipur (CG) in Civil Suit No.48-A/2008 wherein the said court decided the suit on merits without providing opportunity of adducing evidence to the appellant.

2. As per the appellant, a civil suit for specific performance of contract was filed before the trial Court on 5-5-2005 in which the appellant has filed his affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 as examination-in-chief and the matter was fixed for evidence on 9-9-2009 for cross examination of the appellant/plaintiff and his witness. The appellant had a family function of engagement of his niece and could not attend the court on that particular day. The trial Court proceeded to dispose of the civil suit on merit as per Order 17 Rule 3 of the CPC 1908. The trial Court failed to appreciate to import the Order 17 Rule 3 of CPC 1908 and closed the case for default on the the part of appellant/plaintiff, therefore, judgment/decree passed by the trial Court is liable to be reversed.
3. On the other hand, learned counsel for the respondent would submit that sufficient opportunity was provided to the appellant, but he failed to examine himself and the trial Court is well within its jurisdiction in deciding the case on merit.
4. I have heard learned counsel for the parties and perused the record in which judgment/decree was passed by the trial Court.
5. From the order sheet dated 9-9-2009, it is clear that appellant was not present before the trial Court. The trial Court closed his evidence and decided the matter on merit.

6. The core issue for consideration of this court is whether the trial Court is right in deciding the case on merit as per Order 17 Rule 3 of the CPC 1908. Order 17 Rule 3 of CPC 1908 may be mentioned as under

“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)”.

7. In the present case, parties were not present before the trial Court, therefore, the only course open to the trial Court was to proceed under Order 17 Rule 2 of CPC, but the trial Court proceeded with case under Order 17 Rule 3 of CPC which is not permissible in accordance with law, therefore, judgment and decree passed by the trial Court deserves to be set aside.
8. Accordingly, the appeal is allowed and the judgment and decree dated 9-9-2010 passed by the trial Court is set aside. Now the case is remanded back to the trial Court for adjudicating the case afresh. The trial Court is directed to proceed with the case after

providing opportunity to the appellant for adducing evidence and decide the case afresh.

9. Parties are directed to appear before the trial Court on 4-12-2018 for further proceeding.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju