

Narbada Yadav Vs. Ramsajivan

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Court : Madhya Pradesh

Decided On : Sep-12-2012

Appellant : Narbada Yadav

Respondent : Ramsajivan

Advocate for Pet/Ap. : Shri. Deepak Pendharkar

Judgement :

W.P.No.13428 o

12. 09.12 Shri Deepak Pendharkar, counsel for the petitioner.

Smt Sharda Dubey, PL for the respondents No.2.

Heard on the question of admission.

The petitioner/defendant has filed this petition under Article 227 of the Constitution of India for quashment of the order dated 5.7.12 and 19.7.12 (Annex.P/1) dismissing his applications filed under Order 14 rule 5 and Order 26 rule 9 of the CPC respectively.

After taking me through the averments of the petition and the papers placed on the record along with the impugned order, petitioner's counsel prayed for admission and allowing this petition.

Having heard the counsel, on perusing the record, I have not found any error, perversity, illegality or infirmity in the impugned order dated 19.7.12 whereby the application of the petitioner filed under Order 26 rule 9 has been dismissed consequently on such question this petition being devoid of any merit, is hereby dismissed at the state of motion hearing.

So far the order dated 5.7.12 regarding dismissal of the application under order 14 rule 5 of the CPC is concerned, after perusing the copies of the plaint and the written statement, I am of the considered view that in the available pleadings of the parties, the impugned order requires reconsideration.

It is settled proposition of the law that the trial court on framing the issues, is bound to frame all the issues on which the parties of the litigation may produce their respective evidence in support of the same.

After perusing the earlier framed existing issues (Annx.P/5).I have not found any issue which is so framed by the trial court taking into consideration the special pleadings of the petitioner in his written statement.

So, in such premises, instead to interfere in the impugned order in this petition, or issuing any notice against admission to the respondent, this petition is disposed of by extending the liberty to the petitioner to file the fresh application under order 14 rule 5 of the CPC for framing the additional issues in the light of the special pleadings of his written statement so also the other pleadings on which no issues have been framed by the trial court.

The petitioner is specifically directed that in such application the specific proposed issues be stated.

Pursuant to it, the trial court is also directed that on filing such application by the petitioner within ten days from today, the same be considered and adjudicated in the light of the pleadings of the parties including the special pleadings of the written statement of the petitioner by extending opportunity of hearing to the respondent No.1/plaintiff in accordance with the procedure prescribed under the law and also without being influenced from any findings or observation made by

such court in the impugned order or by this court in this order.

However, respondent No.1 is extended the liberty to approach this court with appropriate proceedings if he is aggrieved by this order or any part of it.

The petition is disposed of as indicated above.

(U.C.Maheshwari) Judge MKL

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