

Khersingh Vs. State Bank of India

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Court : Madhya Pradesh

Decided On : Jul-09-1996

Reported in : 1997(1)MPLJ16

Judge : T.S. Doabia, J.

Acts : Code of Civil Procedure (CPC) - Order 36, Rule 1

Appeal No. : C.R.M.M. No. 264 of 1996

Appellant : Khersingh

Respondent : State Bank of India

Advocate for Pet/Ap. : Suraj Devi Agrawal, Adv.

Disposition : Petition dismissed

Judgement :

T.S. Doabia, J.

The petitioner preferred a petition under Order 36, Rule 1 of the Code of Civil Procedure, 1908. This was based on the ground that loan amount which was received from the State Bank of India has been paid back with interest. Accordingly a verdict was sought in terms of Order 36, Rule 1 of Code of Civil Procedure. The provisions of Order 36, Rule 1 reads as under:

'Power to state case for Court's opinion - (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question :

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.'

A bare perusal of the above order indicate that the Court could be approached only if there is an agreement to refer the dispute to the Court. There is no agreement between the petitioner and the State Bank of India to get the matter referred to the Court which rejected the prayer of the petitioner. As such, the order passed by the Court below holding that the provisions of Order 36, Rule 1 of the Code of Civil Procedure are not attracted, cannot be faulted with.

2. If the petitioner wants to file any other suit, he will be at liberty to do so. It is only in that event i.e. if the petitioner files a suit then he would have to pay the Court fee as is required to be paid, under the law.

This petition is held to be without merit and is dismissed.

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