

Narain Vs. Shanti Devi and ors.

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Court : Rajasthan

Decided On : Dec-15-1977

Reported in : AIR1978Raj57

Judge : P.D. Kudal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 3, Rule 4(2)

Appeal No. : Civil Revision No. 328 of 1977

Appellant : Narain

Respondent : Shanti Devi and ors.

Advocate for Pet/Ap. : N.L. Tibrewal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

P.D. Kudal, J.

1. This revision petition under Section 115, C. P. C. is directed against the order of the learned Munsiff and Judicial Magistrate No. 1, Jaipur City, Jaipur dated 20th Aug., 1977.

2. The brief facts of the case, which are relevant for the disposal of this revision petition, are that the suit was dismissed in default on 10th April, 1977. An application for restoration of the suit was filed on the same day. The notice of the restoration application was given to the learned counsel for the defendant who endorsed on the back of the notice that his power has terminated with the dismissal of the suit. It appears that the learned Munsiff had decided this question on 25th May, 1977, that the power of attorney of the learned counsel did not terminate with the dismissal of the suit in default. The application for restoration was eventually allowed on 20th August, 1977. The defendant-petitioner feeling aggrieved against the order of restoration has come up in revision before this Court.

3. The learned counsel for the defendant-petitioner has invited the attention of the Court to the provisions of Order 3, Rule 4, C. P. C. It has been contended that an explanation has been added by the Civil P. C. (Amendment) Act, 1976, (Act No. 104 of 1976). It was also contended that the matter enumerated in Sub-clauses (a) to (d) in the explanation to Order 3, Rule 4 (2), C. P. C. shall only be deemed to be proceedings in the suit. It was contended that the language of this explanation enumerates the proceedings in this suit. It was also contended that any other proceedings shall not be construed to be proceedings in the suit. As the restoration proceedings have not been enumerated in the explanation, they shall not be deemed to be proceedings in the suit and would require a fresh power of attorney in favour of the counsel. The learned Munsiff, while relying on *Pannalal v. Firm, Ballaram Basia*, 1958 Raj LW 95 : (AIR 1957 Ran 391), and *Jyoti Prasad v. Punjab National Bank*, AIR 1963 All 374, held that the power of attorney in favour of the counsel did not terminate with the dismissal of the suit in default. It was strenuously contended on behalf of the defendant-petitioner that the service of notice on the counsel for the defendant was not valid, and in view of the newly added explanation, the service of notice of the restoration proceedings on the learned counsel for the defendant-petitioner was ineffective and inoperative.

4. The contentions of the learned counsel for the defendant-petitioner have been considered. Having given my most anxious consideration to the arguments advanced by the learned counsel I find myself completely unable to accept his

contention. A suit dismissed in default may be restored under the provisions of Order 9, Rule 4, C. P. C. The power of attorney in favour of the learned counsel for the defendant does not terminate when the suit is dismissed in default. The explanation added to Order 3, Rule 4 (2), C. P. C. is only by way of abundant caution to clarify doubts. It is not exhaustive and does not restrict that even the restoration proceedings may not be deemed to be proceedings in the suit. The Civil P. C. (Amendment) Act. 1976, has been enacted with a view to simplify the proceedings of litigation and to avoid delays. If the contention of the learned counsel for the defendant-petitioner is accepted, then the very purpose of the Amending Act would be defeated.

5. The learned counsel for the defendant-petitioner, did not file any appeal Or revision petition against the order dated 25th May, 1977 which became final.

6. For the reasons stated above, there is no force in this revision petition, which is hereby dismissed in limine.

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