

Ram Singh Vs. Somendra Kumar

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Court : Rajasthan

Decided On : Dec-22-1971

Reported in : AIR1973Raj37

Judge : Jagat Narayan, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 15

Appeal No. : Civil Revn. Appln. No. 654 of 1969

Appellant : Ram Singh

Respondent : Somendra Kumar

Advocate for Def. : R.C. Maheshwari, Adv.

Advocate for Pet/Ap. : D.S. Sishodia, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Jagat Narayan, C.J.

1. This is a revision application by the plaintiff against an order of the District Judge Bhilwara, passed in proceedings for the preparation of a final decree in a suit for dissolution of Partnership and rendition, of accounts.

2. Under the preliminary decree a commissioner was appointed to take accounts and the defendant was directed to produce the accounts of the partnership firm before him. No appeal was filed against the preliminary decree. The defendant however did not produce the account books of the partnership firm before the commissioner despite several opportunities. The commissioner then submitted a report to the learned District Judge. At the instance of the plaintiff the learned District Judge did not send the case to the commissioner. A date was fixed for recording the evidence of the plaintiff. On 14-8-1969 the plaintiff examined one witness Shankar Lal and closed his evidence. The defendant sought an opportunity of producing his evidence and the Court fixed 9-9-1969 for his evidence.

3. Against the above order the present revision application has been filed. It is contended that the defendant cannot now be given any opportunity of producing evidence as he did not produce the account books of the partnership either before the commissioner or before the Court.

4. I have heard the learned counsel for the parties and I am satisfied that no opportunity of producing evidence can now be given to the defendant. In Lindley on Partnership, Twelfth Edition at page 550 the following consequence of non-production of account books is stated:

'If a partner has books or accounts in his possession, and he will not produce them, an account may, nevertheless be arrived at by presuming everything against him. Thus in a case where an account was directed at the suit of the representatives of a deceased partner against the surviving partner, and the latter would not produce the books necessary to enable the Master to take the accounts, the Master estimated the net profits at 10 per cent, on the capital employed, and the Court, on exceptions to his report confirmed it, adding that if he had set the net profits down at 20 per cent. his report would have been equally confirmed'.

I accordingly allow the revision application with costs and set aside the order of the trial Court.

5. Let the record be returned to the trial Court forthwith.

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