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Magan Lal Vs. Chabi Lal

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Court : Rajasthan

Decided On : Mar-08-1995

Reported in : AIR1996Raj103

Judge : B.J. Shethna, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 17, Rule 1

Appeal No. : C.R. No. 166 of 1995

Appellant : Magan Lal

Respondent : Chabi Lal

Advocate for Pet/Ap. : Prakash Tatia, Adv.

Judgement :
ORDER

B.J. Shethna, J.

1. Heard learned counsel for the petitioner.

2. This petition is directed against the impugned order dated 3rd Feb. 1995, passed by learned trial Judge, by which he closed the evidence of the defendants, on the ground that the defendant failed to keep his witnesses present and he himself is not ready to give evidence and he wants time on the ground that his

Advocate has gone out. By that order, the case was fixed for hearing the arguments of learned counsel for the parties on 10-2-1995. On 10-2-1995, an application was moved by learned counsel for the defendant before the trial court praying for some time to enable him to approach the High Court for obtaining appropriate order against the order passed by the learned trial Judge on 3rd Feb. 1995. Time was granted by the learned trial Judge up to 4-3-1995 and it is stated at the Bar by learned counsel for the petitioner that now the matter is kept on 25th March, 1995 for hearing the arguments of learned counsel for the parties.

3. Having perused the order sheets of the trial court, it appears that the evidence of the plaintiff side was closed on 29th July, 1994 and the case was posted on 25th Nov. 1994 for recording the defendant's evidence. On that day, learned counsel for the defendant was present and he prayed for time to keep the witnesses present on the next date, which was granted and it was kept on 13th January, 1995. On 13th Jan. 1995, it was again kept for 3-2-1995 for keeping the defendant's witneses present. Again, on 3-2-1995, the defendant failed to keep the witnesses present. Though the defendant was present, he refused to give evidence in the absence on his Advocate, as his Advocate had gone out. Under these circumstances, the learned trial Judge closed the evidence of the defendant by his order dated 3-2-1995. That order is under challenge in this revision application.

4. Looking to the entire facts and circumstances of the case, it is clear that the learned trial Judge has committed an error in not granting the application and not adjouring the case, in the absence of Advocate of the defendant and committed error in closing the evidence of the defendant. At least one more opportunity was required to be given particularly when enough opportunities were given to the plaintiff. The learned Judge has overlooked the fact that the plaintiff was enjoying temporary injunction in his favour, and therefore also, if one more opportunity was granted to the defendant then it would not have caused any prejudice to the plaintiffs. This is not the way in which the trial court should function. Unless and until the trial Court is satisfied that the party is not at all willing to, proceed with the case and wants to delay the proceedings at any cost then only it should exercise the discretion of not granting the adjournment, otherwise not. Thus, by passing the

impugned order dated 3-2-1995, the learned trial Judge has committed a material irregularity, which calls for interference by this Court under Section 115, C.P.C.

5. As the learned trial Judge has kept the matter for hearing of the arguments of the parties on 25th March, 1995, no useful purpose will be served by issuing notice and calling upon the other saide to show cause as to why this petition be not admitted and the impugned order passed by learned trial Judge be not set aside. On the contrary, it will further delay the proceedings.

6. Therefore, when this Court is fully convinced that the impugned order is illegal then the impunged order has to quashed and set aside and accordingly, it is set aside.

7. It is assured by learned counsel for the defendant-petitioner that on the next date of hearing (i.e. 25th March, 1995), the defendant shall keep his witnesses present before the trial Court. If he fails to keep them present before the trial court for giving evidence on that day, then the learned trial Judge will be at liberty to proceed further and decide the suit after hearing the arguments of learned counsel for the parties.

8. If the respondent-plaintiff is aggrieved by this order, then he is at liberty to approach this Court on or before 20th March, 1995.

A copy of this order be sent down by the Registry to the trial court forthwith. The learned counsel for the petitioner will serve a copy of this order immediately to the other side.

The revision petition allowed accordingly. The impugned order dated 3-2-1995 passed by the trial court is set aside.

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