

Jeevan Chand Vs. Murlidhar and Others

Jeevan Chand Vs. Murlidhar and Others

SooperKanoon Citation : sooperkanoon.com/920637

Court : Rajasthan

Decided On : Jul-26-2011

Judge : Mahesh Bhagwati, J.

Acts : Code of Civil Procedure (CPC) , - Order 41 Rule 27

Appeal No. : S.B. Civil Writ Petition No.4111 of 2010

Appellant : Jeevan Chand

Respondent : Murlidhar and Others

Advocate for Def. : Mr. J.C. Jain; Mr. Amit Gupta, Advs

Advocate for Pet/Ap. : Mr. A.K. Sharma; Mr. Rachit Sharma, Advs

Judgement :

1. Challenge in this writ petition is to the order dated 29.7.2009, whereby the Additional District Judge (Fast Track) No.1, Ajmer allowed the application filed by the respondent-plaintiff under Order 41 Rule 27 of CPC for taking additional evidence on record.

2. Having heard the learned counsel for the parties and carefully perused the relevant material on record, it is noticed that in para no.4 of the application, the plaintiff-respondent is found to have made altogether contradictory submissions. In one breath, it is said that the documents, which he wanted to produce were not

within his knowledge during the pendency of the suit and in another breath, he submitted that he could not produce the said documents even after exercise of due diligence. This self-contradictory averment gives rise to a ridicule situation as to how the respondent-plaintiff could endeavour to find out the documents, which were not at all within his knowledge? The application filed by the respondent-plaintiff is not found to have been covered by the provisions of Rule 27 of Order 41 of CPC. The learned appellate court is found to have passed the impugned order in a cursory manner sans applying his mind to the facts and circumstances of the case. He utterly failed to visualize as to whether the application was falling within the ambit of Rule 27 of Order 41 CPC.

3. What do I fathom from a perusal of the impugned order is that the learned appellate court did not even think it proper to apply the provisions of Order 41 Rule 27 of CPC while adjudicating the said application. It was for the appellate court to exercise its jurisdiction under Rule 27 of Order 41 CPC and thereafter arrive at a finding that one or the other conditions enumerated thereunder was satisfied. A good reason must also have been shown as to why the evidence was not produced by the respondent-plaintiff in the trial court.

4. The Hon'ble Apex Court in the case of K.R. Mohan Reddy Versus M/s. Net Work Inc. Rep. Tr. M.D. Reported in 2008 (2) RLW 1233 (SC) held that it is now a trite law that the conditions precedent for application of clause (aa) of sub-rule (1) of Rule 27 of Order XLI is different from that of clause (b). In the event the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied.

5. The impugned order seems to be arbitrary and non speaking, which cannot be said to be a legal order in the eye of law and the same deserves to be set-aside.

6. For the reasons stated above, the writ petition is allowed and the impugned order dated 29.7.2009 passed by the learned appellate court stands set-aside. The matter is remanded to the Court of Additional District Judge (Fast track) No.1, Ajmer with a direction to pass an order afresh on the application filed under Order 41 Rule 27 of CPC in accordance with the provisions of law after affording an opportunity of being heard to both the parties.

