

(2019) 10 CHH CK 0129

Chhattisgarh High Court

Case No: Second Appeal No. 340 Of 2007

Mittal Roadways And Ors

APPELLANT

Vs

Firoz Khan

RESPONDENT

Date of Decision: Oct. 17, 2019**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96, 96(2), 100, Order 9 Rule 13
- Chhattisgarh Accomodation Control Act, 1966 - Section 12(1)(a), 12(1)(f)

Hon'ble Judges: Sanjay K. Agrawal, J**Bench:** Single Bench**Advocate:** Juhi Jaiswal, R.S. Patel**Final Decision:** Dismissed

Judgement

Sanjay K. Agrawal, J

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/defendant under Section 100 of

the CPC.

2. Ms. Juhi Jaiswal, learned counsel for the appellant/defendant would submit that the first appellate Court ought to have seen that defendant was not

duly noticed and so, he could not appear before the trial Court to contest the suit on merits and consequently, the decree granted against him under

Sections 12 (1) (a) and 12 (1) (f) of the Act is on perverse grounds, therefore, this second appeal deserves to be admitted by formulating substantial

question of law.

3. In Civil Suit No. 15ÂA/2006 filed by the plaintiff/respondent herein for eviction of defendant/appellant based on the provisions contained under

Section 12 (1) (a) and 12 (1) (f) of the Chhattisgarh Accommodation Control Act, 1966 (hereinafter referred to as 'the Act'), exÂparte decree dated

28/04/2006 was passed against the defendant by the trial Court being aggrieved by which Civil Appeal No. 5ÂA/2007 was preferred by him which was dismissed by the first appellate Court finding no merits.

4. The exÂparte decree dated 28/04/2006 passed by the trial Court in favour of plaintiff was challenged in the first appellate Court by the defendants

under Section 96 of the CPC. It is correct to say that the right of appeal under Section 96 (2) of the CPC is statutory in nature and remedy under

Order 9 Rule 13 and Section 96 (2) of the CPC are concurrent, but in an application filed under Order 9 Rule 13 of the CPC, defendant may question

the correctness of the order posting suit for exÂparte by the trial Court and also contend that he has sufficient and cogent reasons for not being able

to appear before the trial Court, however, the aforesaid ground cannot be raised in the first appeal against the exÂparte decree preferred under

Section 96 (2) of the CPC [see: Bhanu Kumar Jain Vs. Archana Kumar and Anr. (2005) 1 SCC 787 And Bhivchandra Shankar More Vs. Balu

Gangaram More and Ors. (2019) 6 SCC 387.] In view of that I do not find this ground that defendant/appellant was not duly noticed in the suit good

enough to formulate any substantial question of law.

5. Coming to the next submission made by learned counsel for the appellant that the decree was passed on perverse grounds under Sections 12 (1)(a)

and 12 (1) (f) of the Act, both the Courts below have concurrently held that plaintiff is entitled for decree as defendant has failed to make payment of

rent for a period of two years i.e. from January, 2004 to January, 2006, and plaintiff has no alternative suitable accommodation in his possession in the

township of Raipur and he requires the suit accommodation bonafidely for Â nonÂresidential purpose which is a finding of fact based on evidence

available on record and does not give rise to any substantial question of law for determination in this second appeal, particularly, taking in view that the

decree has already been executed on 21/08/2006.

6. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).