

**(1957) 01 MP CK 0014**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** C. Miscellaneous Appeal No. 36 of 1956

Chimanlal

APPELLANT

Vs

Mulchand

RESPONDENT

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**Date of Decision:** Jan. 18, 1957

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 21

**Citation:** (1957) JLJ 259

**Hon'ble Judges:** S.M. Samvatsar, J; P.V. Dixit, J

**Bench:** Division Bench

**Advocate:** Waghmare, for the Appellant; D.P. Vaidya, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Dixit, J.

This is an appeal from an order of the Additional District Judge of Indore striking off the appellant's defence under O. 11, R. 21 C.P.C. for his failure to produce certain bills and vouchers for inspection by the plaintiffs. It appears from the record that the defendant was ordered to produce his account-books for inspection by the plaintiffs. The defendant produced his account-books but later on there was some dispute between the parties as regards the inspection of certain bills and vouchers. On 25th June 1956, the trial Judge ordered the defendant to give inspection of these bills and vouchers to the plaintiffs within ten days and the case was adjourned to 6th July, 1956. On this date the defendant, who was a resident of Jaipur, was unable to come to Indore in time for his appearance in the Court. According to him he missed his train at Sawai Madhopur and also sent a telegram to the Court about his inability to reach the Court in time. The court, therefore, made an order striking out the defence of the appellant. The defendant then applied for setting aside the order striking out his defence. The trial Judge took the view that the defendant had the remedy of appealing against the order under O. 43, R. 1 C.P.C. and accordingly rejected the defendant's prayer for setting aside the ex parte order.

2. The order of the trial Judge cannot clearly be upheld. It is settled law that the stringent provisions of Order 11, Rule 21 C.P.C. should be applied only in extreme cases where obstinacy or contumacy on the part of the defendant or a wilful attempt to disregard the order of the Court is established (see Jawandsingh Vs. Krishnakumar AIR 1950 Nag 8.) The circumstances in which the trial Judge struck off the defence of the appellant certainly do not disclose any obstinacy or contumacy on the part of the appellant so as to penalise him by striking out his defence. Learned counsel appearing for the respondents did not make any attempt to support the order of the lower court on merits. He however, contended that on 10th May, 1956, the appellant was ordered to produce the documents in question with the direction that in the event of his default his defence would stand struck off and that according to this order the defence already stood struck off on the appellant's failure to produce these documents and the subsequent order passed on 6th July, 1956, striking out the appellant's defence was a mere superfluity. It was contended that the appellant should have appealed against the order passed on 10th May, 1956, and not against the order made on 6th July, 1956. The contention is based on an insufficient appreciation of the order dated 10th May, 1956, and the proceedings in the suit which were held subsequent to that order. From the order of 10th May, 1956, it is clear that it directed the defendant to produce his accounts for the inspection of the plaintiff. The defendant did produce his account-books for the inspection of the plaintiffs in compliance with this order. The subsequent order of the trial court was with regard to inspection of certain bills and vouchers and the defence of the appellant was struck off for his failure to produce these particular documents. There is thus no force in the contention that the appellant should have appealed against the earlier order.

3. For these reasons, the order dated 6th July, 1956, of the Additional District Judge of Indore is set aside and he is directed to give an opportunity to the defendant appellant to produce the documents in question for the inspection of the plaintiffs. Parties shall bear their own costs of this appeal.

Samvatsar J.

4. I agree.