
Smt. Shanta Bala and Others Vs Buda Oram and Others

Civil Revision No. 256 of 1999

Court: Orissa High Court

Date of Decision: July 28, 1999

Acts Referred:

Civil Procedure Code Amendment Act, 1976 " Order 19 Rule 1, Order 8 Rule 5(2), Order 9 Rule 4

Citation: (1999) 88 CLT 422

Hon'ble Judges: R.K. Dash, J

Bench: Single Bench

Advocate: B. Baug, S.K. Das, N.N. Mohapatra and B. Das, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

R.K. Dash, J.

Heard the learned Counsel for the Petitioners.

2. The question involved, in this revision being limited one. I propose to dispose of the same finally at the stage of admission.

3. The Petitioners are the Plaintiffs in Money Suit No. 96 of 1996 pending on the file of the learned Civil Judge (Senior Division), Rourkela. The

Defendants being noticed did not enter appearance and were set ex parte. On the date when ex parte hearing was to be taken up the Plaintiffs

could not appear for which the suit was dismissed for default. To restore the suit to file"" they filed a petition under Order 9 Rule 4, Code of Civil

Procedure. On the date of hearing one of the Plaintiffs filed an affidavit supporting what has been stated in the petition as to the cause of non-

appearance of Plaintiff No. 4 who was looking after the suit on the date fixed for ex parte hearing. Another affidavit was filed by the doctor

supporting the Plaintiffs" case that Plaintiff No. 4 being ill was under his treatment. It was contended by the Plaintiffs to treat the above affidavits as

evidence as provided under Order 19, Rule 1, C.P. C. and to restore the suit to file. Learned court below by the Impugned order repelled the said

contention and directed the Plaintiffs to adduce- evidence. It is against" that order that the Plaintiffs have filed the present revision.

4. It may be noted that after amendment of the CPC in 1976, sub-rule 2 of Rule 5 of Orders 8 has been brought into the statute book wherein the

Court has been given power to pronounce judgment in the suit on the basis of the facts contained in the plaint, where the Defendants have not filed

their pleadings. By borrowing the aforesaid provision, the learned trial court in the present case should have disposed of the Plaintiffs" petition filed

under Order 9, Rule 4, C.P. C. when the averments made in the said petition were supposed by affidavits. This could have saved the court"s time

and no prejudice would have been caused to the Defendants since they did not enter appearance in the suit nor filed their pleadings.

5. In view of the above, the revision is allowed and the impugned order is set aside. The learned trial court is directed to dispose of the Plaintiffs

petition under Order 9, Rule 4, C.P. C. and pass orders on the basis of the affidavits filed in support thereof.

6. Civil Revision is disposed of. Urgent certified copy be granted, if applied for.

Revision disposed of.