

State of Orissa and Others

Vs

Sibaram Baral (Simaram Barai)

Civil Appeal No. 9055 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

10.05.1996

ORDER

1. Though the respondent had been served with notice on 5-8-1992, till date neither the unserved cover nor the acknowledgement has been received back. Under these circumstances, notice must be deemed to have been served.

2. Leave granted.

3. The only question is whether the High Court can direct the appellant to deposit the decretal amount with costs of Rs 7500 as a condition to setting aside the ex parte decree ? The respondent laid the suit to recover a sum of Rs 1,46,820 against the appellants. The suit came to be decreed ex parte. The appellant has filed an application under Order 9 Rule 13 CPC to set aside the ex parte decree. The trial court set aside the ex parte decree subject to payment of Rs 50. The High Court in the impugned order dated 8-1-1992 in CR No. 694 of 1991 allowed the revision and set aside the order of the trial court and directed the appellants to deposit the decretal amount and the costs. Order 41 Rule 1(3) of CPC provides thus :

"Where the appeal is against a decree for payment of money, the appellant shall, within such time as the appellate court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit."

4. When an appellate power is exercised on an appeal filed against the decree of the trial court, the Court exercises judicial discretion to grant conditional stay of the execution of the money decree reasonably based on fact situation. In this case, there is no appeal before the High Court against ex parte decree of the trial court. The trial court itself set aside the ex parte decree subject to the payment of the cost. When revision was carried, the High Court was required to consider whether the trial court properly considered the facts to set aside the ex parte decree and the case called for interference. It cannot exceed its jurisdiction in directing the appellant to deposit the entire decretal amount and also the cost of Rs 7500. The explanation given by the State is well justified as no one takes responsibility for the lapses. Each would pass the buck on the other. Ultimately, it would be the public justice which would suffer and put to jeopardy. Under these circumstances, the order of the High Court is set aside and that of the trial court is restored.

5. The appeal is accordingly allowed. No costs.