

S.B.Civil Revision Petition No.133/2000

Firm Deva Ram Jai Prakash.

vs.

Malook Singh.

Date : 28.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Singhal, for the petitioner.

None present for the respondent.

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Heard learned counsel for the petitioner since nobody appeared on behalf of respondent even after service.

Brief facts of the case are that the petitioner/plaintiff filed suit for recovery of total amount of Rs.12,056.61p. against the defendant/respondent. The defendant submitted written statement and took a plea that he is not an agriculturist and, therefore, the plaintiff's suit is not maintainable in view of the provisions contained in Rajasthan Relief of Agricultural Indebtedness Act, 1957 (for short 'the Act of 1957') and proper procedure is to submit petition for determination of debt of the defendant. Said application was dismissed by the trial court on the ground that the defendant failed to produce any document to prove that the defendant is an agriculturist. The defendant thereafter again submitted an application on 20.1.1997 under Section 5 of the Act of 1957. Upon this application, the trial court vide order dated 23.8.1997 decided the suit of the plaintiff and held

it as abated in view of Section 6(6) of the Act of 1957.

Learned counsel for the petitioner vehemently submitted that the order of the trial court is absolutely perverse and contrary to the law laid down by this court which has been referred in the impugned order itself.

The fact is not in dispute that the defendant even after taking the plea that he is an agriculturist, did not move any application before the Debt Relief Court for determination of debt. The petition has not been admitted by the Debt Relief Court as has not been filed. Once the petition is admitted by the Debt Relief Court, then the proceedings in civil court stands stayed. It is true that the plaintiff also could have submitted the petition under Section 6 of the Act of 1957 but when the plaintiff is disputing the fact that the defendant is an agriculturist, then the civil court could not have determined that issue at this stage when the parties never led evidence. Therefore, the order of the trial court dated 23.8.1997 is contrary to law and hence, deserves to be set aside.

Consequently, this revision petition is allowed, the order dated 23.8.1997 is set aside and the trial court is directed to decide the suit expeditiously on merits.

(PRAKASH TATIA), J.

S.Phophaliya