

RAJINDER TIWARI

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v.

KEDAR NATH (DECEASED) THR. LRS. & ORS.

(Civil Appeal Nos.3282-3283 of 2019)

MARCH 28, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Suit – Appellant-plaintiff filed suit for permanent injunction against the respondent-defendant in relation to the suit property – Defendant’s right to file the written statement was closed – Suit decreed – First appeal filed by the defendant – Dismissed – Second appeal filed by the defendant – Allowed – Held: No justifiable reason to deny the defendant of his right to file the written statement – Trial in the suit was not done satisfactorily inasmuch as the defendant was not afforded an adequate opportunity to file his written statement – In the absence of any written statement, the defendant could neither adduce proper evidence nor file any documentary evidence in support of his case – Rights of the parties were, therefore, decided by the two Courts (Trial Court and First Appellate Court) by decreeing the suit and the High Court by dismissing the suit on the basis of insufficient evidence, which caused prejudice to both the parties – All the contesting parties to the suit must get fair opportunity to contest the suit on merits in accordance with law – Impugned orders set aside – Matter remitted to the Trial Court for deciding the civil suit afresh on merits in accordance with law.

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Allowing the appeals, the Court

HELD: 1.1 The trial in the suit has not been done satisfactorily inasmuch as the defendant was not afforded an adequate opportunity to file his written statement. In the absence of any written statement, the defendant could neither adduce proper evidence nor file any documentary evidence in support of his case. The rights of the parties were, therefore, decided by the two Courts (Trial Court and First Appellate Court) by

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- A decreeing the suit and the High Court by dismissing the suit on the basis of insufficient evidence. It caused prejudice to both the parties. No justifiable reason is found to deny the defendant of his right to file the written statement. He was entitled to file the written statement and to adduce oral and documentary evidence for contesting the suit on merits. All the contesting parties to the suit must get fair opportunity to contest the suit on merits in accordance with law. Matter is remitted to the Trial Court for deciding the civil suit afresh on merits in accordance with law. The respondents herein (legal representatives of original defendant) are accordingly granted liberty to file their written statement within one month from the date of their appearance in the suit. The Trial Court will thereafter frame issues arising in the suit on the basis of the pleadings of the parties and then allow the parties to adduce their evidence in addition to the evidence already adduced. The parties will also be allowed to file additional documents, if they so wish. [Paras 14-20][884-E-H]

- D 1.2 The Trial Court will decide the suit on the basis of the pleadings and the evidence adduced by the parties uninfluenced by any judgment passed by the Courts in this Case on the earlier occasion. No opinion expressed any on the merits of the issue while having formed an opinion to remand the case to the Trial Court. The trial be completed within one year. The impugned orders are set aside and the suit is restored to its original file for being tried on merits. [Paras 21-24][885-C-E]

- E CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3282-3283 of 2019.

- F From the Judgment and Order dated 03.11.2016 of the High Court of Delhi at New Delhi in RSA No.188 of 2010 and Order dated 26.04.2017 in C.M. Application No. 46865 of 2016 in RSA No. 188 of 2010.

- G R. K. Kapoor, Ms. Kheyali, Rajat Kapoor, Anis Ahmed Khan, Advs. for the Appellant.

Ajay Kumar, Manmohan Jha, Sandeep Garausa, Vipin Kumar Jai, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. These appeals are directed against the final judgment and order dated 03.11.2016 passed by the High Court of Delhi at New Delhi in R.S.A. No.188 of 2010 whereby the High Court allowed the RSA filed by the respondents herein and order dated 26.04.2017 in CM(Application) No.46865 of 2016 by which the High Court dismissed the application for re-hearing of the second appeal filed by the appellant herein.

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3. A few facts need mention hereinbelow for the disposal of the appeals, which involve a short point.

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4. The appellant is the plaintiff and the original respondent (now represented by his legal representatives) is the defendant in the civil suit out of which these appeals arise.

5. The appellant(plaintiff) filed Civil Suit No. 147 of 2007 against the original respondent(defendant) in the Court of Senior Civil Judge-cum-Rent Controller(North East Dist.), Karkardooma Courts, Delhi for permanent injunction in relation to the suit property.

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6. It is not in dispute that the defendant's right to file the written statement was closed by the Senior Civil Judge with the result, the defendant could not file his written statement and nor could file any documentary evidence.

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7. The plaintiff then adduced his evidence. The defendant, however, could only cross-examine the plaintiff's witnesses without his defence for want of written statement.

8. By judgment/decreed dated 01.02.2010, the Senior Civil Judge decreed the plaintiff's suit by passing a decree for permanent injunction as prayed by him. The defendant felt aggrieved and filed first appeal before the Additional District Judge.

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9. By judgment dated 26.07.2010, the first Appellate Court dismissed the appeal and upheld the judgment and decree passed by the Senior Civil Judge.

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10. The defendant felt aggrieved and filed second appeal in the High Court of Delhi. By order dated 03.11.2016, the High Court allowed

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A the second appeal, set aside the judgment of the first Appellate Court and dismissed the plaintiff's (appellant's herein) suit. Thereafter the plaintiff filed application for re-hearing of the second appeal but the same was dismissed by order dated 26.04.2017. Against both the orders, the appellant(plaintiff) has filed the present appeals by way of special leave in this Court.

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11. So, the short question, which arises for consideration in these appeals, is whether the High Court was justified in allowing the defendant's second appeal and was, therefore, justified in dismissing the plaintiff's (appellant's herein) suit.

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12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow these appeals and while setting aside the impugned orders, remand the case to the Trial Court (Senior Civil Judge) for trying the civil suit afresh on merits in accordance with law.

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13. In our considered opinion, the need to remand the case to the Senior Civil Judge for trying the civil suit afresh on merits has occasioned for more than one reason.

14. First, we find that the trial in the suit has not been done satisfactorily inasmuch as the defendant was not afforded an adequate opportunity to file his written statement.

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15. Second, in the absence of any written statement, the defendant could neither adduce proper evidence nor file any documentary evidence in support of his case.

16. Third, the rights of the parties were, therefore, decided by the two Courts (Trial Court and First Appellate Court) by decreeing the suit and the High Court by dismissing the suit on the basis of insufficient evidence. In our view, it caused prejudice to both the parties.

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17. Fourth, we do not find any justifiable reason to deny the defendant of his right to file the written statement. He was entitled to file the written statement and to adduce oral and documentary evidence for contesting the suit on merits.

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18. It is a settled law that all the contesting parties to the suit must get fair opportunity to contest the suit on merits in accordance with law. A decision rendered by the Courts in an unsatisfactory conducting of the

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trial of the suit is not legally sustainable. It is regardless of the fact that in whose favour the decision in the trial may go. A

19. It is for these reasons, we are of the view that these appeals deserve to be allowed and matter is remitted to the Trial Court for deciding the civil suit afresh on merits in accordance with law.

20. The respondents herein (legal representatives of original defendant) are accordingly granted liberty to file their written statement within one month from the date of their appearance in the suit. The Trial Court will thereafter frame issues arising in the suit on the basis of the pleadings of the parties and then allow the parties to adduce their evidence in addition to the evidence already adduced. The parties will also be allowed to file additional documents, if they so wish. B C

21. The Trial Court will decide the suit on the basis of the pleadings and the evidence adduced by the parties uninfluenced by any judgment passed by the Courts in this Case on the earlier occasion.

22. We, however, make it clear that we have not expressed any opinion on the merits of the issue while having formed an opinion to remand the case to the Trial Court. D

23. Let the trial be completed within one year. Parties to appear before the Senior Civil Judge (North East District), Karkardooma Courts, Delhi on 02.04.2019. E

24. The appeals thus succeed and are accordingly allowed. The impugned orders are set aside and the suit is restored to its original file for being tried on merits as indicated above.