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C.A.No. 5652 OF 1997

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ITEM NO. 104 COURT NO. 6 SECTION IV

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5652 OF 1997@@  
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Mohandas and Ors. ... Appellant (s)

Vs.

Ghisia Bai and Ors. ... Respondent (s)

( With office report )

Date: 15-02-2001 This/These matter(s) was/were called  
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE  
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For appellant (s) Mr. Shiv Sagar Tiwari, adv.

For respondent (s)  
Nos. 1-5 Mr. Niraj Sharma, adv.(Not Present)

No. 6 Mr. Rohit K Singh, adv.  
Mr. SK Agnihotri, adv.

UPON hearing counsel, the Court made the following  
O R D E R

Seen the office report dated 3.2.2001.

Learned counsel appearing for the appellants states that there is no need to take steps for substitution of respondent No. 1 as all the legal representatives are already on record in this appeal.

The appeal is allowed. There shall be no order as to costs.

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(Alka Dudeja)  
Court Master

(S. Krishnan)  
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5652 OF 1997

Mohandas and Ors.

& Appellants

Vs.

Ghisia Bai and Ors.

& Respondents

O R D E R

The plaintiff-appellants herein filed a suit for declaration and for permanent injunction in the Court of Civil Judge, Class II, Harsud, District Khandwa, M.P. The said suit was filed on 26th October, 1984. 3rd May, 1994 was the date fixed for adducing evidence by the plaintiff-appellants. Instead of leading evidence, the plaintiff-appellants filed an application for seeking better particulars of the written statement. The said application was rejected. Immediately thereafter an application was moved under Order VI Rule 16 for deletion of certain paragraphs of the written statement. The said application was also rejected. On 7th May, 1994 the plaintiff-appellants remained absent. The counsel for the plaintiff-appellants on the said date moved an application for a short adjournment for filing revision against the order passed on 3rd May, 1994 rejecting the application of plaintiff-appellants. The said application for adjournment was dismissed. Thereafter the counsel for the plaintiff-appellants moved an application under Order VII Rule 1 on the ground that the plaintiff is seriously ill and, therefore, the case may be adjourned. The said application was also rejected. Thereafter the trial Court dismissed the suit under Order XVII Rule 3 of the Code of Civil Procedure. The plaintiff-appellants preferred a first appeal before the first appellate Court, but the same was dismissed. The second appeal preferred by the plaintiff-appellants was also met with the same fate. The High Court was of the view that the suit was dismissed not under Order XVII Rule 2, but was dismissed under Order XVII Rule 3. The validity of the judgment of the High Court is impugned in this appeal.

Learned counsel appearing for the appellants urged that the facts and circumstances of the case show that in fact the suit was dismissed under Order XVII Rule 2 and not under Order XVII Rule 3. Order XVII Rule 2 provides where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed by Order IX or make such other order as it thinks fit. Order XVII Rule 3 provides where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default (a) if the parties are present, proceed to decide the suit forthwith; or (b) if the parties are, or any of them is, absent, proceed under rule 2'.

In the present case what we find is neither the plaintiff-appellant nor his witnesses were present on 7th May, 1994. Therefore, the case has to be dismissed under Order XVII Rule 2. Even Rule 3 itself provides that if the parties or any of them absent, the Court shall proceed to decide the suit

under Order XVII Rule 2. In view of the said legal position, we are of the view that the view taken by the court below was erroneous and deserves to be set aside. We, therefore, set aside the judgment under appeal and sent the case back to the trial Court to decide the matter in accordance with law.

The appeal is allowed. There shall be no order as to costs.

& & & & & & & & & ..J  
(V.N. Khare)

& & & & & & & & & J.  
(Doraiswamy Raju)

New Delhi,  
February 15, 2001.

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