Before Rajesh Bindal, J.

RAMESH RANI,—*Petitioner*

versus

RAMAN KUMAR GOYAL AND ANOTHER,—*Respondents*

C.R. No. 3188 of 2010

23rd January, 2012

Code of Civil Procedure, 1908 - S. 89 O.10 Rl. 1, 1-A, 2, 3, 4 - Suit for dissolution of partnership deed and for rendition of accounts - Written Statement filed - Case adjourned for filing of replication - On 4.12.2009 the matter adjourned to 1.2.2010 noticing that on failure of parties to appear in person, provisions of Order 10 Rule 4 would apply - On 1.2.2010 the Trial Court dismissed suit - Plaintiff challenged order - Held, that courts below did not follow procedure under order 10 CPC and simply recorded that parties did not appear and dismissed suit - Provisions of order 10 Rule 1 CPC are mandatory - Order dismissing suit in violation of provisions of law - Set aside.

Held, that if the facts of the present case are considered in the light of enunciation of law, where Hon'ble the Supreme court provided that it is mandatory for the courts to explore the process for conciliation as is provided for under Section 89 read with Order 10 Rule 1-A CPC and in case subject-matter of dispute cannot be referred to or the parties are not consenting for that process, brief reasons are to be recorded therefore in the order. Though Order 10 Rule 1 CPC provides that facts can be ascertained even from the counsels. It is only Order 10 Rule 2 CPC, which provides that the parties are to be examined. The consequence of default under Order 10 Rule 2 CPC is provided for under Rule 4. In the present case, though the counsels were present on every date of hearing, nothing is evident from the zimni orders passed by the court below on various dates that any facts were sought to be ascertained from them. The court merely directed the parties to appear in person. In terms of Order 10 Rule 1-A CPC, the court is required to direct the parties to appear in person after recording admissions and denials under Rule 1 CPC to opt for either

mode of settlement outside the court. The provisions have been held to be mandatory. It is not that only the plaintiff had not appeared in the court, rather, the defendants had also not appeared.

(Para 22)

Further Held, Learned court below did not follow the procedure provided under Order 10 CPC and simply recorded that as the parties did not appear, the consequences under Order 10 Rule 4 CPC follow and the suit was dismissed - Order being totally in violation of provisions of law, deserves to be set-aside.

(Para 23)

Mandeep S. Sachdev, Advocate, *for the petitioner.*

Chetan Mittal, Senior Advocate with Kapil Aggarwal, Advocate *for the respondents.*

RAJESH BINDAL J.

(1) The plaintiff is before this court aggrieved against the order dated 1.2.2010 passed by the court below whereby the suit filed by her was dismissed under Order 10 Rule 4 CPC.

(2) Briefly, the facts of the case are that the petitioner filed a suit on 3.1.2009, *inter-alia*, for dissolution of partnership deed dated 1.4.1998 executed between the petitioner-plaintiff and respondent No. 1- Raman Kumar Goyal in the name and style of M/s New Hindustan Surgicals Company and for rendition of accounts. After filing of the written statement by the respondents on 11.5.2009, the case was adjourned for filing of replication. After the same having not been filed, the learned court below adjourned the case number of times. On 4.12.2009, the matter was adjourned to 1.2.2010 noticing that on failure of the parties to appear in person, provisions of Order 10 Rule 4 CPC would apply. On the next date, i.e., 1.2.2010, the suit having been dismissed, the order is impugned before this court.

(3) Learned counsel for the petitioner submitted that firstly no application regarding admission and denial of documents, as is noticed in the order dated 24.7.2009, was filed by either of the parties. He further submitted that for admission or denial of any of the allegations in the

pleadings, the parties were not required to appear in person. It could be in the presence of counsels as well. On all the occasions, counsels for both the parties were present but no questions were asked by the court below. Without exhausting the option under Order 10 Rule 1 CPC, the court could not jump to Order 10 Rule 2 CPC for oral examination of the parties or their companions. The tone and tenor of the order shows that the court had proceeded on the assumption that it was the default of the party under Order 10 Rule 2 CPC, hence the suit was liable to be dismissed. The provision itself provides for extension of time. In support of his contention, reliance was placed upon the judgment of Hon'ble the Supreme Court in **M/s Kapil Corepacks Pvt. Ltd. and others *versus* Shri Harbans Lal (since deceased) through Lrs. (1)** and of this court in **Sarwan Singh *versus* Onkar Singh and others (2).**

(4) On the other hand, learned counsel for the respondents submitted that the impugned order passed by the learned court below is strictly in terms of the provisions of law. The Code provides for examination of the counsels or the parties before framing the issues to shorten the litigation. Keeping that object in view, a stringent provision has been made in Order 10 Rule 4 CPC providing for passing of the judgment or such order as the court deems fit. In the present case, a perusal of the zimni orders passed by the court below shows that the petitioner had defaulted repeatedly. No replication to the written statement was filed, where certain facts had been pleaded showing that the contentions raised in the plaint were totally wrong. Considering the aforesaid facts, the petitioner is not entitled to the relief prayed for.

(5) Heard learned counsel for the parties and perused the paper book.

(6) Various orders in CPC provide for procedure in detail for conduct of trial in a suit after the parties have appeared and filed written statement. Before framing of issues, which is provided for under Order 14 CPC, to shorten the dispute between the parties, various provisions have been laid down.

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(1) 2010 (4) Civil Court Cases 63
(2) 2010 (1) Civil Court Cases 231

(7) Before appreciating the contentions raised by learned counsel for the parties, a reference to Section 89 and Order X CPC is required. The same are reproduced hereunder:

"Section 89 CPC

89. Settlement of disputes outside the Court.- (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for —

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Where a dispute has been referred—

(a) for Arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.]

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Order X of the Code of Civil Procedure

ORDER X

EXAMINATION OF PARTIES BY THE COURT

1. Ascertainment whether allegations in pleadings are admitted or denied.- At the first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

1-A. Direction of the Court to opt for any one mode of alternative dispute resolution.- After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of Section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1-B. Appearance before the conciliatory forum or authority.- Where a suit is referred under rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit.

1-C. Appearance before the court consequent to the failure of efforts of conciliation.- Where a suit is referred under rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

2. Oral examination of party, or companion of party. - (1) At the first hearing of the suit, the Court-

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

3. Substance of examination to be written.- The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4. Consequence of refusal or inability of pleader to answer.- (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a day not later than seven days from the date of first *hearing* and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit."

(8) Order 10 CPC, which has been invoked to non-suit the petitioner, provides for examination of parties by the court. Rule 1 thereof provides that at the first hearing of the suit, the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom these are made. The Court shall record such admissions and denials. Rule 1-A provides that after recording the admission and denial, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in Section 89 (1) CPC. On the option of the parties, the court shall fix the date of appearance before such forum or authority, as may be opted.

(9) Section 89(1) CPC provides that where it appears to the court that there exist element of a settlement, which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may re-formulate the terms of a possible settlement and refer the same for (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat; or (d) mediation.

(10) Where a dispute is referred to any of the forum/authority under Order 10 Rule 1-A CPC, the parties are to appear before such forum or authority. Rule 1-C of Order 10 CPC provides that on failure of efforts of conciliation, the matter shall be referred back to the Court.

(11) Rule 1-A, B and C were inserted in Order 10 CPC by the Code of Civil Procedure (Amendment) Act, 1999 w.e.f. 1.7.2002 with the insertion of Section 89 CPC. Earlier Section 89 was repealed by the Arbitration Act, 1940. The Objects and Reasons appended in the Bill seeking insertion of Section 89 CPC are extracted below:

> "**Amendments: Objects and Reasons**- Clause 7 provides for the settlement of disputes outside the Court. The provisions of clause 7 are based on the recommendations made by Law Commission of India and Malimath Committee. It was suggested by Law Commission of India that the Court may require attendance of any party to the suit or proceedings to appear in person with a

> view to arriving at an amicable settlement of dispute between the parties and make an attempt to settle the dispute between the parties amicably. Malimath Committee recommended to make it obligatory for the Court to refer the dispute, after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. It is only when the parties fail to get their disputes settled through any of the alternative disputes resolution method that the suit could proceed further. In view of the above, clause 7 seeks to insert a new Section 89 in the Code in order to provide for alternative dispute resolution. [*Statement of Objects and Reasons (Bill 1999).*]"

(12) The object of newly added Section 89 CPC is obviously to promote alternative methods of dispute resolution.

(13) After exhausting the options available under Rule 1-A to 1-C of Order 10 CPC, the court is to proceed to deal with the matter in terms of Rules 2 and 3, the consequences whereof are provided in Rule 4 thereof.

(14) The issue as to what is the procedure to be adopted by the courts in terms of the provisions of Section 89 CPC and Order 10 Rule 1-A CPC has been considered by Hon'ble the Supreme Court in **Salem Advocate Bar Association, T.N. *versus* Union of India (3),** wherein it has been held as under:

> "As can be seen from Section 89, its first part uses the word "shall" when it stipulates that the "court shall formulate terms of settlement". The use of the word "may" in later part of Section 89 only relates to the aspect of reformulating the terms of a possible settlement. The intention of the legislature behind enacting Section 89 is that where it appears to the court that there exists an element of a settlement which may be acceptable to the parties, they, at the instance of the court, shall be made to apply their mind so as to opt for one or the other of the four ADR methods mentioned in the section and if the parties do

(3) 2005 (6) SCC 344

not agree, the court shall refer them to one or the other of the said modes. Section 89 uses both the words "shall" and "may" whereas Order 10 Rule 1-A uses the word "shall" but on harmonious reading of these provisions it becomes clear that the use of the word "may" in Section 89 only governs the aspect of reformulation of the terms of a possible settlement and its reference to one of the ADR methods. There is no conflict. It is evident that what is referred to one of the ADR modes is the dispute which is summarised in the terms of settlement formulated or reformulated in terms of Section 89."

(15) In **Afcons Infrastructure Ltd. and another *versus* Cherian Varkey Construction Co. (P) Ltd. and others (4),** Hon'ble the Supreme Court held that the course adopted by the trial court to invoke provisions of Section 89 CPC for exploring non-adjudicatory ADR process in the absence of an application is erroneous. The only way to read Section 89 and Order 10 Rule 1-A CPC is that after completing the pleadings and seeking admission or denial, wherever required, however, before framing issues, the court will have to take recourse to Section 89 CPC while recording the nature of dispute and informing the parties about the five options available. It has further been observed therein that in family disputes or matrimonial cases, the ideal stage for mediation will be immediately after service of notice on the respondent-defendant and before even the written statements or objections are filed. The object is to avert the hostility which might further be aggravated by the allegations and counter-allegations in the pleadings. However, no dispute can be referred unless the parties to the suit agree to such reference.

(16) The issue as to whether reference to ADR process is mandatory or not has also been considered by Hon'ble the Supreme Court in the aforesaid judgment. Certain categories of cases which are normally suitable for ADR process have also been enumerated along with the cases, which are not normally considered to be suitable. It also provides that the Civil Courts should invariably refer the cases to ADR process. Where the case is found to be not suited for reference to any of the ADR processes, the

(4) 2010 (8) SCC 24

court will have to record reasons in brief. Consideration for reference to ADR is mandatory but actual reference to an ADR process is not. Relevant paragraphs thereof are extracted below:

> "26. Section 89 starts with the words "where it appears to the court that there exist elements of a settlement". This clearly shows that cases which are not suited for ADR process should not be referred under Section 89 of the Code. The court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1-A of Order 10 of the Code, the Civil court should invariably refer cases to ADR process. Only in certain recognised excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under Section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is a must.
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> 27. The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:
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> (i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).
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> (ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.).
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> (iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc.

(v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.

(vi) Cases involving prosecution for criminal offences.

28. All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

(i) All cases relating to trade, commerce and contracts including

* disputes arising out of contracts (including all money claims);
* disputes relating to specific performance;
* disputes between suppliers and customers;
* disputes between bankers and customers;
* disputes between developers/builders and customers;
* disputes between landlords and tenants/ licensor and licensees;
* disputes between insurer and insured;

(ii) All cases arising from strained or soured relationships, including

* disputes relating to matrimonial causes, maintenance, custody of children;
* disputes relating to partition/division among family members/coparceners/co-owners; and
* disputes relating to partnership among partners.

(iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

* disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.);
* disputes between employers and employees;
* disputes among members of societies/associations/ apartment owners' associations;

(iv) All cases relating to tortious liability, including

* claims for compensation in motor accidents/other accidents; and

(v) All consumer disputes, including

* disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

The above enumeration of "suitable" and "unsuitable" categorisation of cases is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process.

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41. Having regard to the provisions of Section 89 and Rule 1-A of Order 10, the stage at which the court should explore whether the matter should be referred to ADR processes, is after the pleadings are complete, and before framing the issues, when the matter is taken up for preliminary hearing for examination of parties under Order 10 of the Code. However, if for any reason, the court had missed the opportunity to consider and refer the matter to ADR processes under Section 89 before framing issues, nothing prevents the court from resorting to Section 89 even after framing issues. But once evidence is commenced, the court will be reluctant to refer the matter to the ADR processes lest it becomes a tool for protracting the trial.

42. Though in civil suits, the appropriate stage for considering reference to ADR processes is after the completion of pleadings, in family disputes or matrimonial cases, the position can be slightly different. In those cases, the relationship becomes hostile on account of the various allegations in the petition against the spouse. The hostility will be further aggravated by the counter-

allegations made by the respondent in his or her written statement or objections. Therefore, as far as Family Courts are concerned, the ideal stage for mediation will be immediately after service of respondent and *before* the respondent files objections/written statements. Be that as it may.

43. We may summarize the procedure to be adopted by a court under section 89 of the Code as under :

(a) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.

(b) The court should first consider whether the case falls under any of the category of the cases which are required to be tried by courts and not fit to be referred to any ADR processes. If it finds that the case falls under any excluded category, it should record a brief order referring to the nature of the case and why it is not fit for reference to ADR processes. It will then proceed with the framing of issues and trial.

(c) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.

(d) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

(e) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for

reference to conciliation which will be governed by the provisions of the AC Act. If all the parties agree for reference to conciliation and agree upon the conciliator/s, the court can refer the matter to conciliation in accordance with section 64 of the AC Act.

(f) If the parties are not agreeable for arbitration and conciliation, which is likely to happen in most of the cases for want of consensus, the court should, keeping in view the preferences/options of parties, refer the matter to any one of the other three ADR processes : (a) Lok Adalat; (b) mediation by a neutral third party facilitator or mediator; and (c) a judicial settlement, where a Judge assists the parties to arrive at a settlement.

(g) If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly settled and there is no personal animosity between the parties (as in the case of motor accident claims), the court may refer the matter to Lok Adalat. In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another Judge for attempting settlement.

(h) If the reference to the ADR process fails, on receipt of the Report of the ADR Forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of Order 23 Rule 3 of the Code in mind.

(i) If the settlement includes disputes which are not the subject matter of the suit, the court may direct that the same will be governed by Section 74 of the AC Act (if it is a Conciliation Settlement) or Section 21 of the Legal

Services Authorities Act, 1987 (if it is a settlement by a Lok Adalat or by mediation which is a deemed Lok Adalat). If the settlement is through mediation and it relates not only to disputes which are subject-matter of the suit, but also other disputes involving persons other than the parties to the suit, the court may adopt the principle underlying Order 23 Rule 3 of the Code. This will be necessary as many settlement agreements deal with not only the disputes which are the subject matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject matter of the suit.

(j) If any term of the settlement is *ex facie* illegal or unforceable, the court should draw the attention of parties thereto to avoid further litigations and disputes about executability.

44. The Court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code :

(i) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. Nothing further need be stated in the order sheet.

(ii) If the reference is to any other ADR process, the court should briefly record that having regard to the nature of dispute, the case deserves to be referred to Lok Adalat, or mediation or judicial settlement, as the case may be. There is no need for an elaborate order for making the reference.

(iii) The requirement in Section 89(1) that the court should formulate or reformulate the terms of settlement would only mean that the court has to briefly refer to the nature of dispute and decide upon the appropriate ADR process.

(iv) If the Judge in charge of the case assists the parties and if settlement negotiations fail, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice. It is therefore advisable to refer cases proposed for Judicial Settlement to another Judge.

(v) If the court refers the matter to an ADR process (other than Arbitration), it should keep track of the matter by fixing a hearing date for the ADR Report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case etc.). Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings.

(vi) Normally the court should not send the original record of the case when referring the matter for an ADR forum. It should make available only copies of relevant papers to the ADR forum. (For this purpose, when pleadings are filed the court may insist upon filing of an extra copy). However if the case is referred to a Court annexed Mediation Centre which is under the exclusive control and supervision of a Judicial Officer, the original file may be made available wherever necessary.

45. The procedure and consequential aspects referred to in the earlier two paragraphs are intended to be general guidelines subject to such changes as the concerned court may deem fit with reference to the special circumstances of a case. We have referred to the procedure and process rather elaborately as we find that section 89 has been a non-starter with many courts. Though the process under Section 89 appears to be lengthy and complicated, in practice the process is simple: know the dispute; exclude 'unfit' cases; ascertain consent for arbitration or conciliation; if there is no consent, select Lok Adalat for simple cases and mediation for all other cases, reserving reference to a Judge assisted settlement only in exceptional or special cases."

(17) On failure of efforts of conciliation, the matter is to be referred back to the court by such forum or authority to proceed further in terms

of Order 10 Rule 2 CPC, which provides that at the first date of hearing of the suit, the court shall with a view to elucidating matters in controversy in suit examine orally the parties to the suit or any other person who is able to answer any material question relating to the suit or their pleader.

(18) Rule 4 of Order 10 CPC provides that on failure of the counsels of the parties to appear or their refusal to answer any material question, the court may pronounce the judgment as it thinks fit.

(19) The CPC provides for procedure for trial of suits. Procedural law is intended to facilitate the process of justice. As to how a procedural law is to be interpreted and which of the provisions are to be considered as directory or mandatory was considered by Hon'ble the Supreme Court in **Mahadev Govind Gharge and others *versus* Special Land Acquisition Officer (5),** wherein it has been held as under:

> 29. Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold. .....
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> 31. In Justice G.P. Singh's *Principles of Statutory Interpretation* (11th Edn., 2008), the learned author while referring to judgments of different Courts states (at page 134) that procedural laws regulating proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of the court. He further states (at pages 135 and 136) that:
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> "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument "*ab inconvenienti*", said LORD MOULTON, "is one which requires to be used with great caution"."

(5) 2011 (6) SCC 321

32. The learned author while referring to the judgments of this Court in the case of ***Sangram Singh*** v. ***Election Tribunal,*** [(1955) 2 SCR 1] recorded (at page 384) that :

"while considering the non-compliance with a procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and further its ends and therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory…"

33. This Court in the case of ***Byram Pestonji Gariwala*** v. ***Union Bank of India & others*** [(1992) 1 SCC 31] referred to *Crawford's Statutory Construction* (para 254) to say that:

"Statutes relating to remedies and procedure must receive a liberal construction 'especially so as to secure a more effective, a speedier, a simpler, and a less expensive administration of law'.

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37. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The Court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve their end object of just, fair and expeditious justice to the parties without seriously prejudicing the rights of any of them."

(20) In case of non-compliance of the provisions of Rules 1 and 2, penal consequences have been provided in Rule 4 of Order 10 CPC, which may result in dismissal of suit, hence the provisions have to be interpreted strictly.

(21) A perusal of the interim orders passed by the court below shows that after filing of written statement by the petitioner on 11.5.2009, the case was adjourned for filing replication. The same having not been filed on 24.7.2009, it was adjourned to 3.9.2009 for the purpose of filing of an application for discovery and interrogation (sic.) and application for admission or denial. On the next date of hearing, none of the aforesaid applications having been filed, the case was adjourned for recording statements of the parties before framing of issues and the counsels were directed to produce the parties for the purpose of recording their statements. On the next two occasions as well, the same order was repeated, whereas in the order passed on the second date, it was mentioned that on failure the provisions of Order 10 Rule 4 CPC would apply. On the next date, considering the fact that none of the parties was present, the learned court below passed the following order:

> "The parties have not come present to make their statement u/o 10 Rule 1 CPC. Case has been adjourned thrice for the said purpose. In these circumstances, the suit is dismissed u/o 10 Rule 4 CPC in view of previous order. File be consigned to the judicial record room, Jalandhar."

(22) If the facts of the present case are considered in the light of enunciation of law, where Hon'ble the Supreme Court provided that it is mandatory for the courts to explore the process for conciliation as is provided for under Section 89 read with Order 10 Rule 1-A CPC and in case subject-matter of dispute cannot be referred to or the parties are not consenting for that process, brief reasons are to be recorded therefor in the order. Though Order 10 Rule 1 CPC provides that facts can be ascertained even from the counsels. It is only Order 10 Rule 2 CPC, which provides that the parties are to be examined. The consequence of default under Order 10 Rule 2 CPC is provided for under Rule 4. In the present case, though the counsels were present on every date of hearing, nothing is evident from the zimni orders passed by the court below on various dates that any facts were sought to be ascertained from them. The court merely directed the parties to appear in person. In terms of Order 10 Rule 1-A CPC, the court is required to direct the parties to appear in person after recording admissions and denials under Rule 1 CPC to opt for either mode

of settlement outside the court. The provisions have been held to be mandatory. It is not that only the plaintiff had not appeared in the court, rather, the defendants had also not appeared.

(23) In the present case, the learned court below did not follow the procedure provided under Order 10 CPC and simply recorded that as the parties did not appear, the consequences under Order 10 Rule 4 CPC follow and the suit was dismissed. The order, being totally in violation of the provisions of law, deserves to be set aside. Ordered accordingly.

(24) The learned court below is directed to proceed further strictly in terms of the provisions of law, as have been interpreted in the judgments, referred to above.

(25) The parties through their counsels are directed to appear before the court below on 4.2.2012.

(26) The petition stands disposed of.

A.K. Jain

Before Tejinder Singh Dhindsa, J.

MOHINDER SINGH,—*Appellant*

versus

SURMUKH SINGH AND OTHERS,—*Respondents*

RSA No.3554 of 2011

2nd February, 2012

Code of Civil Procedure, 1908 - S. 91 & 100 - Punjab Village Common Lands (Regulation) Act, 1961 - S. 13 - Appellant/ defendant had got four houses and these houses were corner houses in the intersection of 2 streets - He interconnected routes of these houses and covered the street - Trolleys and trucks which used to earlier pass through the street faced obstruction - Plaintiff/respondents filed suit u/s 91 CPC - Suit decreed by trial Court - Appeal filed by appellant/defendant dismissed - Second Appeal filed -Contention that special procedure was laid down u/s 91 CPC in cases of public nuisance which had not been followed - RSA dismissed holding that section 91(1) CPC has enlarged scope of locus standi to file suit.