

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 29th OF JULY, 2024

FIRST APPEAL No. 929 of 2024

DILEEP BAKLIWAL THROUGH HIS POWER OF ATTORNEY

SONAM GEDA

Versus

MOHAN SINGH PANWAR

Appearance:

Shri Siddharth Singh – Advocate for appellant.

Shri Bhashkar Agrawal – Advocate for respondent.

JUDGEMENT

- 1] Heard finally, with the consent of the parties.
- 2] This first appeal has been filed by the appellant/defendant under Section 96 of the Code of Civil Procedure, 1908 against the judgement and decree dated 28.02.2024, passed by 11th District Judge, Indore in case No.RCS/1600029-A/2014, decreeing the suit of the respondent/plaintiff and rejecting the counterclaim of the appellant/defendant.
- 3] In brief, the facts of the case are that a suit for declaration and injunction was filed by the plaintiff on 07.11.2014 against the defendant in respect of his using the trademark “Ankit” unauthorizedly, which according to the plaintiff, he was entitled to

use. In the aforesaid suit, a counter claim was also filed by the defendant/plaintiff. The chronology of the case reveals that from 07.11.2014 to 25.11.2023, i.e., for a span of around nine long years, it was not proceeded in significant manner, whereas, the issues were framed only on 25.11.2023, and on 01.12.2023, the matter was fixed for the first time for recording the plaintiff's evidence, however, plaintiff's witnesses were not present on the said date and on 07.12.2023 also the plaintiff's witnesses were not present, although defendant was present throughout, and after 4-5 dates, examination-in-chief of plaintiff's witness was recorded finally on 13.02.2024, but as nobody appeared for the defendant, the matter was kept after 4 O' clock on the same day, however, neither the defendant appeared nor his Advocate, thus, the defendant's counter-claim was dismissed for want of prosecution, he was proceeded ex-parte, and the matter was fixed for final hearing on 20.02.2024, i.e., after six days. On 20.02.204, an application under Order 9 Rule 6 of CPC was filed for setting aside the ex-parte order dated 13.02.2024, however, the learned Judge of the trial Court rejected the same on the ground that the defendant was absent from the Court without any intimation, and also that no cogent reasons have been assigned for his non-appearance and the reason assigned that the counsel was present in the other Court cannot be said to be a justifiable reason for not appearing in the Court and thus, the final judgement and decree have been passed by the learned Judge on 28.02.2024.

4] Shri Siddharth Singh, learned counsel for the appellant/defendant has submitted that the impugned judgement and

decree runs contrary to the settled principles of law, as apparently the learned Judge of the trial Court has not afforded proper opportunity of hearing to the defendant, and to present his counter case. Counsel has submitted that the matter was pending since 07.11.2014, i.e., last around 9 years, in which the right of the defendant should not have been closed in such a haste.

5] It is also submitted that looking to the pendency of the case since last so many years, the learned Judge ought to have given at least one last opportunity to the defendant and to lead his evidence, and his counter-claim ought not to have been rejected in such a casual manner. Thus, it is submitted that the impugned judgement and decree be set aside.

6] On the other hand, Shri Bhaskar Agrawal, learned Counsel for the respondent/plaintiff has opposed the prayer and it is submitted that the defendant and his counsel were well aware about the proceedings, and when the plaintiff was already given the last opportunity to lead his evidence, it was incumbent upon the defendant to remain present in the Court. Thus, it is submitted that in such circumstances, no case for interference is made out.

7] Heard, Having considered the rival submissions and on perusal of the record, this Court is inclined to allow the present appeal for the reason that the learned Judge of the trial Court has lost sight of the fact that the matter was pending since last more than 10 years, during which time, only plaintiff's witness was examined, and the defendant was not present in the Court only on one day. In such circumstances, the learned Judge ought to have adopted a lenient view of the matter,

and ought to have allowed the application under Order 9 Rule 6 of CPC, and ought to have restored the counter-claim of the defendant, however, the learned Judge has proceeded to reject the application and to pass the final judgement in the case. This conduct of the trial Court, in the considered opinion of this Court runs contrary to the principles of natural justice and cannot be sustained in the eyes of law.

8] Accordingly, **impugned judgement and decree dated 28.02.2024 are hereby set aside** and, resultantly, the **application filed by the appellant/defendant under Order 9 Rule 6 of CPC is hereby allowed** and the matter is remanded back to the trial Court to proceed further, in accordance with law.

9] It is made clear that this Court has not reflected upon the merits of the case and defendant is also directed to ensure that his witnesses remain present on such date of hearing as directed by the trial Court. The learned judge of the trial court is also requested to dispose of the case expeditiously.

10] Parties are directed to appear before the trial Court on 10.09.2024.

11] With the aforesaid, present appeal stands **allowed and disposed of**.

(SUBODH ABHYANKAR)
JUDGE

Pankaj