

(2025) 7 ILRA 6
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.07.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

First Appeal From Order No. 531 of 2025

Yudhisthir Yadav ...Appellant
Versus
Abhishek Kumar & Anr. ...Respondents

Counsel for the Appellant:

Dheeraj Singh (Bohra), Rituvendra Singh Nagvanshi, Sr. Advocate

Counsel for the Respondents:

Sarthak Varma

Issue for Consideration

Whether ex parte decree passed in plaintiff's suit for specific performance without framing issues, was valid in law, and whether defendant-appellant's application under Order IX Rule 13 of Civil Procedure Code for setting aside that decree had been wrongly rejected by trial court.

Head Notes

Code of Civil Procedure, 1908 - O. IX. R.13 - Plaintiff-respondent instituted suit for specific performance of contract before Civil Judge (Senior Division) - Suit was decreed ex parte on 12.11.2024 without framing of issues, as defendant-appellant did not appear - Defendant thereafter filed application under Order IX Rule 13 of Code of Civil Procedure on 21.11.2024 seeking to set aside ex parte judgment and decree - Application rejected by trial court vide order dated 20.02.2025 on grounds found to be misconceived by appellant - Aggrieved thereby, defendant preferred present First Appeal From Order praying for setting aside both order dated 20.02.2025 and ex parte decree dated 12.11.2024, and for restoration of suit for adjudication on merits after due framing

of issues and affording opportunity to parties to lead evidence.

Held: There is no dispute that plaintiff's suit for specific performance, filed on 12.07.2024, was decreed ex parte on 12.11.2024, and that defendant's application under Order IX Rule 13 C.P.C. dated 21.11.2024 was rejected by trial court - Suit was decreed without framing issues and within-time application under Order IX Rule 13 C.P.C. rejected, as such, both impugned judgment should be set aside rather to remand matter for fresh consideration of application filed under Order IX Rule 13 C.P.C. - Trial court shall frame issues in suit, allow parties to lead evidence and decide suit expeditiously, preferably within six months, in accordance with law. [Paras 7, 14, 16] (E-13)

Case Law Cited

Balraj Taneja and another v. Sunil Madan and another, **AIR 1999 Supreme Court 3381**; Smt. Kaniz Fatima (deceased) and Another v. Mohd. Naim Ashraf, **AIR 1983 Allahabad 350**; Collector, Land Acquisition Anantnag and Another v. Mst. Kantiji & Others, **AIR 1987 SC 1353**; Rakesh Kumar Jain v. Zulfkar Ali, **2023 SCC Online All 2821 - referred to**

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Specific performance; Ex parte judgment and decree; Without framing issues; Restoration application; Fresh consideration; Records of the trial court be transmitted; Rejection of application under Order IX Rule 13 C.P.C.; Expeditious disposal; Opportunity to the parties to lead evidence; Remand the matter for fresh consideration

Case Arising From

APPELLATE JURISDICTION: First Appeal From Order No. - 531 of 2025

From the Judgment and Order dated 20.02.2025 of the Civil Judge (Senior Division), Court No. 2 Bulandshahar, Misc. Case No.217/2024

Appearances for Parties

Adv. for the Appellant:

Dheeraj Singh (Bohra), Rituendra Singh Nagvanshi, Sr. Advocate

Advs. for the Respondent:
Sarthak Verma

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri N.D. Shukla, learned counsel for the defendant-appellant and Sri Anadi Krishna Narayan, learned counsel, holding the brief of Sri Sarthak Verma, learned counsel for the plaintiff-respondents.

2. Brief facts of the case are that suit for specific performance of contract filed by plaintiff-respondent, was decreed ex parte by the trial court vide judgment and decree dated 12.11.2024. Against the ex parte judgment and decree dated 12.11.2024, application under Order IX Rule 13 of Civil Procedure Code, 1908 (hereinafter referred to as the "C.P.C.") has been filed on behalf of the defendant-appellant on 21.11.2024. Against the application under Order IX Rule 13 of the C.P.C., an objection was filed on behalf of the plaintiff. The trial court vide judgment dated 20.2.2025, has rejected the application filed on behalf of the defendant under Order IX Rule 13 of C.P.C. Hence, the instant First Appeal From Order under Section 104 read with Order 43 Rule 1(d) of the Civil Procedure Code for following relief:-

"The relief sought by means of present FAFO is that the present appeal may be allowed, order dated 20.2.2025 passed by the Additional Civil Judge (Sr. Division), Court No.2, Bulandshahar in Misc. Case No.217 of 2024 in Original Suit No.784 of 2024 between Abhishek

Kumar and another (plaintiffs) vs. Yudhisthir Yadav (defendant) and ex parte decree dated 22.11.2024 may be set aside and suit may be decided on merit after full trial".

3. This Court entertained the matter on 12.3.2025 and granted interim protection in the matter.

4. Learned Senior Counsel for the appellant submitted that suit for specific performance cannot be decreed without framing issues in the suit. He submitted that suit was decreed in ex parte manner vide judgment and decree dated 12.11.2024 within period of four months. He further submitted that within time application under Order IX Rule 13 of the C.P.C. has been rejected on misconceived grounds. He submitted that ex parte judgment and decree passed by the trial court as well as the order, rejecting the application under Order IX Rule 13 C.P.C., should be set aside and suit for specific performance should be decided afresh after framing issues, giving opportunity to parties to lead evidence in accordance with law.

5. On the other hand, Sri Anadi Krishna Narayan, learned counsel, holding the brief of Sri Sarthak Verma, learned counsel for the plaintiff-respondents submitted that the application under Order IX Rule 13 of the C.P.C. filed by the defendant-appellant has been rightly rejected under the impugned order. He further submitted that the suit was decreed as ex parte as the defendant was avoiding the service of notice. He submitted that no interference is required and the instant First Appeal From Order filed by the appellant should be dismissed. He further submitted that if the Hon'ble Court is of the view that application filed under Order IX Rule 13

C.P.C. requires fresh consideration, the matter may be sent back before trial court for fresh consideration of application under Order IX Rule 13 C.P.C.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records of the trial court which was summoned vide order of this Court dated 12.3.2025.

7. There is no dispute about the fact that suit for specific performance filed on 12.7.2024 by the plaintiff-respondent has been decreed ex parte within a period of 4 months vide judgment and decree dated 12.11.2024. There is also no dispute about the fact that the application dated 21.11.2024 under Order IX Rule 13 of the C.P.C. filed on behalf of the defendant-appellant has been rejected.

8. The perusal of the ex parte judgment and decree dated 12.11.2024 passed by the trial court demonstrates that the suit for specific performance has been decreed without framing issues.

9. Hon'ble Supreme Court in the case reported in **AIR 1999 Supreme Court 3381, Balraj Taneja and another** versus Sunil Madan and another has held that suit for specific performance of contract cannot be decided without framing issues even the written statement has not been filed by defendants. Paragraph Nos. 28, 29, 41 & 43 of the judgment of the Hon'ble Apex Court rendered in **Balraj Taneja (supra)** will be relevant for perusal which are as under:-

"28. Having regard to the provisions of Order 12 Rule 6, Order 5 Rule 8, specially the proviso thereto, as also Section 58 of the Evidence Act, this Court in Razia Begum case [AIR 1958

SC 886 : 1959 SCR 1111] observed as under:

"In this connection, our attention was called to the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code with particular reference to the proviso which is in these terms:

'Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.'

The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted."

The Court further observed:

"Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers."

29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by

the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8.

41. There is yet another infirmity in the case which relates to the "judgment" passed by the Single Judge and upheld by the Division Bench.

43. In an old case, namely, *Nanhe v. Saiyad Tasadduq Husain* [(1912) 15 Oudh Cases 78] it was held that passing of a mere decree was a material irregularity within the meaning

of Section 115 of the Code and that even if the judgment was passed on the basis of the admission made by the defendant, other requirements which go to constitute "judgment" should be complied with."

10. The ratio of the above mentioned judgment of Hon'ble Supreme Court in **Balraj Taneja (supra)** demonstrate that even in the case of admission court should pass the judgment which go to constitute "Judgment".

11. This Court in the case reported in AIR 1983 Allahabad 350, **Smt. Kaniz Fatima (deceased) and Another vs. Mohd. Naim Ashraf** has held that decree passed in suit without framing relevant issues, will be illegal. Paragraph Nos. 23 & 24 of the judgment rendered in the case of *Smt. Kaniz Fatima (supra)* will be relevant for perusal which is as under:-

"23. There is no dispute with the proposition of law laid down in the aforesaid decision, but the true scope of the said rule would be that where the parties have led their entire evidence on all the pleas raised by them, they cannot be permitted to urge at the conclusion of the proceedings or in appeal that they were taken by surprise by non-framing of an issue on that particular point on which they have already exhausted their evidence. In such a case it cannot be said that the parties are prejudiced in any manner whatsoever by non-framing of an issue. But the said rule cannot be construed to cover those cases as well where the evidence was led on issues on which the parties actually went to trial, because it is well settled that the evidence adduced on any particular issue by the parties cannot be made foundation for

decision of any other and different plea on which no issue has been framed, because in the absence of an issue on the point they cannot be said to have an opportunity of adducing evidence in support of it or in rebuttal of it. It cannot be assumed that the parties have exhaustively led evidence on all the pleas raised in the pleadings. A party is supposed to lead evidence only on the issues framed in the suit. The other party can object and the court can always refuse to record evidence which does not relate to the issues framed in the suit. Even if evidence has been led and brought on record, the court will not be justified to look into that evidence for deciding a point not covered by the issues. Thus, it cannot be said that if the parties had led evidence in the case it should be construed to cover all the pleas raised in the pleadings although no issue has been framed on that point.

24. The object of framing the issue is to direct the attention of the parties to lead evidence on that specific issue framed and if no evidence is led (one line obliterated Ed.) drawn against the concerned party for holding that it has no evidence to support or to rebut the plea covered by the issue in question. But in the absence of proper issues covering all the pleas raised in pleadings it cannot be said that the parties have exhausted all their evidence or all the pleas raised by them although the same are not covered by the issues framed. In this view of the matter, we find that in the present case since proper issues have not been framed, which arise out of the pleadings of the parties as well as in the statement of the case recorded under O. 10, R. 2 of the Code, it cannot be said that the defendants have led all their evidence which they would have led in

support of the pleas which are not covered by the issues framed in the suit. The decision, recorded by the court below, therefore, cannot be sustained on the said ground urged by the learned counsel for the plaintiff. The case, therefore, deserves to be remanded to the trial court for decision afresh after framing proper additional issues in the suit and giving full opportunity to the parties to lead their evidence which they may like to produce in support of their case. Learned court below will carefully scrutinize pleadings and frame necessary additional issues."

12. The Apex Court in the case reported in AIR 1987 SC 1353, **Collector, Land Acquisition Anantnag and Another vs. Mst. Kantiji & Others** has held that in place of rejecting the matter on technical grounds, the matter should be decided on merits.

13. This Court in the case reported in 2023 SCC Online All 2821, **Rakesh Kumar Jain vs. Zulfkar Ali** has set aside the orders passed, rejecting the application under Order IX Rule 13 C.P.C. as well as ex parte decree passed in Original Suit and directed the trial court to decide the original suit afresh.

14. In the instant matter the suit was decreed without framing issues and within-time application under Order IX Rule 13 C.P.C. has been rejected, as such, both the impugned judgement should be set aside rather to remand the matter for fresh consideration of application filed under Order IX Rule 13 C.P.C.

15. Considering the entire facts and circumstances of the case, the judgment and order dated 20.2.2025 passed by the

Civil Judge (Senior Division), Court No.2, Bulandshahar in Misc. Case No.217/2024 is set aside and restoration application dated 21.11.2019 (4C2), under Order 9 Rule 13 C.P.C. is allowed. Consequently the ex parte judgment and decree dated 22.11.2024, passed in Original Suit No.784/2024 is also set aside.

16. The instant First Appeal From Order is allowed. Original Suit No.784/2024 is restored to its original number. The trial court shall frame issues in the suit and afford opportunity to the parties to lead evidence in accordance with law. The trial court shall decide the suit expeditiously, preferably within a period of six months from the date of production of the certified copy of the order, in accordance with law.

17. Records of the trial court be transmitted to the court concerned forthwith.

(2025) 7 ILRA 11
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Civil Misc. Review Application No. 174 of 2025

Hindustan Petroleum Corporation Ltd. & Anr. **...Applicants**

Versus

Fida Hussain **...Opposite Party**

Counsel for the Applicants:

Komal Mehrotra

Counsel for the Opposite Party:

Yash Padia

Issue for Consideration

I. Whether The Court overlooked the fact that brochure for Dealer Selection provides for non rectifiable clause since 2023 advertisement

II. Whether The Court overlooked the fact that in contractual matters, the parties are bound by the terms and conditions of the advertisement/brochure and the Court cannot direct any party to act contrary to the terms and conditions of the brochure.

III. Whether In M/s Indian Oil Corporation Limited & others v. Raj Kumar Jha & Others reported in (2012) 2 PLJR 783, the Patna High Court has upheld the rejection of the application by corporation and directed strict adherence to the terms and conditions mentioned in the advertisement.

Head Notes

The Constitution of India, 1950-Article 226- The Code of Civil Procedure, 1908-Section 151 & Order 47 Rule 1- Court had gone into all the materials that were present before the Court - Court finding the defect in the PAN to be curable at the first instance had set aside the order rejecting the application for award of retail outlet dealership of the petitioner - Review application appears to be an appeal in disguise - Review application dismissed.

Held- The grounds in the present review application neither fall within the ambit of 'discovery of new and important matter or evidence' nor within 'mistake or error apparent on the face of record'. **(Para 3, 5 & 6)** (E-15)

Case Law Cited

State of West Bengal v. Confederation of State Government Employees; 2019 SCC Online Cal 9181; M/s Indian Oil Corporation Limited & others v. Raj Kumar Jha & Others reported in (2012) 2 PLJR 783

List of Acts

The Constitution of India, 1950- The Code of Civil Procedure, 1908

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