

Ayodhya Prasad Brahman Vs. Janak Dulari (Dead) Smt. Chitra Shukla

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SooperKanoon Citation : sooperkanoon.com/1043421

Court : Madhya Pradesh

Decided On : Oct-09-2012

Appellant : Ayodhya Prasad Brahman

Respondent : Janak Dulari (Dead) Smt. Chitra Shukla

Judgement :

W.P.No.15582 o

09. 10.12 Shri Devendra Shukla, counsel for the petitioner.

Heard on the question of admission.

The petitioner/plaintiff has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 23.8.12 passed by ADJ.Amarpatan in MCA No.30/12 affirming the order dated 29.8.11 passed by Civil Judge Class I, Amarpatan in MJ.No.2/10 whereby his application filed under order 9 rule 4/9 of the CPC for restoration of Co.No.10-A/97 which was dismissed in default of appearance and PF, has been dismissed.

Initially, the case was argued at length for admission and allowing this petition for restoration of Co.No.10-A/97 but in the available circumstances of the matter according to which after filing the aforesaid Co.No.10-A/97, the same was dismissed on 28.10.2005 due to non-appearance of the petitioner's counsel so also not payment of PF in compliance of the direction of the court.

Subsequent to such dismissal, on behalf of the petitioner an application under Order 9 rule 4 of the CPC was filed as MJ.No.22/08 for restoration of the suit.

The same was also dismissed in default vide order dated 22.1.09.

Subsequent to that instead to file the application for restoration of MJ.No.22/08, a fresh petition MJ.No.2/10 was filed for restoration of the aforesaid civil original suit and such application was dismissed by the trial court holding that unless the earlier MJ.No.22/08 is restored, the question of restoration of the civil original suit, could not be considered in the matter.

On filing the impugned appeal before the subordinate appellate court, by affirming such order, the same was dismissed, on which, the petitioner has come to this court.

In the aforesaid circumstances, on making the query from the petitioner's counsel how the second application under Order 9 rule 4/9 of the CPC for restoration of the suit could be entertained by the trial court unless the earlier application under Order 9 rule 4/9 of the CPC was restored by such court, on which, instead to argue further he seeks permission to withdraw this petition with liberty to file appropriate application before the trial court for restoration of MJ.No.22/08 along with appropriate application under section 5 and 14 of the Limitation Act with a further prayer for appropriate direction to the trial court that on filing such application the same be considered and decided in accordance with the procedure prescribed under the law.

In the available circumstances, considering the aforesaid prayer, the petition is hereby dismissed as withdrawn and not pressed by extending the liberty as prayed by the petitioner's counsel.

However, the trial court is directed that on filing the aforesaid fresh application for restoration of MJ.No.22/08, the same be considered by such court in accordance with the procedure prescribed under the provisions of CPC, Limitation Act etc.C.C as per rules.

(U.C.Maheshwari) Judge MKL

