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Court : Guwahati

Decided On : Aug-10-2005

Judge : T. Vaiphei, J.

Appellant : Chameli Devi and ors.

Respondent : Dipak Nath and ors.

Disposition : Application allowed

Judgement :

T. Vaiphei, J.

1. This is an application filed by the appellants in RSA No. 13 of 1996 (re-numbered as RSA No. 2 of 2005) for restoring the second appeal, which was dismissed in default, on 10.5.2005.

2. Unfolding his case, Mr. A.C. Bhowmik, the learned Counsel for the appellants, submits that on the day fixed for hearing of the appeal, he had to leave for Ishanchandranagar, Belonia, South Tripura on short notice to attend the marriage ceremony of his grand-daughter and had instructed his junior, Shri Kaushik Roy to seek adjournment of the case. According to the learned Counsel, his junior counsel, who was present in the court premises on that day, had expected that the matter would reach only in the second half of the day as the same was listed at Item No. 16 of the hearing list. The learned Counsel further states that the matter

unexpectedly came up in the first half of the day when his junior counsel was not in the court room whereupon the appeal came to be dismissed. Without disputing that there was lapses on his part and his junior counsel in not adjourning the case in time, the learned Counsel, however, contends that the appellants may not be penalized for their lapses. It is asserted by him that the lapses on their part are not intentional but was occasioned by bona fide inadvertence. It is thus prayed that the appeal be restored to file for hearing on merit. To buttress his contention that a party should not suffer for the lapses on the part of his counsel, he strongly relies on (i) Lachi Tewari and Ors. v. Director of Land Records and Ors. : AIR 1984 SC41 , (ii) Lajpat Rai v. State of Punjab : [1981]3SCR509 and (iii) A.R. Vadodriya v. Municipal Corporation of Greater Bombay : AIR2004 Bom8 .

3. Appearing for the respondents, Mr. P. Deb Roy, the learned Counsel, drawing my attention to the written objection of the respondents, vehemently opposes restoration of the appeal. He asserts that no sufficient cause has been made out in the application for restoring the appeal to file. He points out that the appeal had earlier been dismissed in default, which was, however, subsequently restored by this Court and that the appeal is of 1996 vintage and has never been prosecuted with zeal by the appellants, whose only motive being to delay the execution of the impugned judgment and decree. According to the learned Counsel, the appellants should be effectively barred once and for all from denying the respondents of the fruits of their litigation. Moreover, contends the learned Counsel, the counsel for the appellants neither sought leave nor applied through his junior adjournment for the day at the time of mention, and having not done so, the application for restoration of the appeal is neither bona fide nor maintainable and, therefore, is liable to be dismissed with cost.

4. On careful consideration of the pleadings of the parties, it cannot be disputed that there is no rational explanation for the lapses or inaction of the learned Counsel for the appellants on that fateful day. However, having said that, one cannot also be oblivious of the starking fact that such lapse or inaction is not one which can be attributable to the appellants, for which they can be faulted with. The question to be determined then is whether the appellants should be penalized for the lapse/inaction of his counsel? The common thread which runs through the

aforementioned three cases is that where an appeal is dismissed for the default of the counsel for the appellants, the party should not suffer for the misdemeanour or inaction of his counsel. The Apex Court observed in Lajpat Rai's case (supra) that a party who, as per the present adversary legal system, has selected his advocate, briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate omission or misdemeanour of his civil counsel. In that view of the matter, the application for restoration of the appeal cannot be thrown out. To do so would be to penalize the appellants for no fault of them. However, the respondents should not be left high and dry and should also be duly compensated for the hardship caused to them.

5. For the reasons stated in the foregoing, the application for restoration stands allowed. The appeal shall, accordingly, be restored to file for immediate hearing on merit. The appellants shall pay a sum of Rs. 1,000 (rupees one thousand) to the respondents on the next date fixed for hearing, which may be realized by them from their counsel.

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