

Sood and Company Vs. Smt. Ghisa Devi Alias Geeta Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/485488

Court : Allahabad

Decided On : May-26-2009

Reported in : 2009(4)AWC3568

Judge : Amitava Lala and ;D.K. Arora, JJ.

Appellant : Sood and Company

Respondent : Smt. Ghisa Devi Alias Geeta Devi and ors.

Judgement :

ORDER

Amitava Lala, J.

1. This appeal has been preferred from the judgment and order by the concerned Additional District and Sessions Judge, Gorakhpur dated 24th March, 2009 rejecting an application under Order IX, Rule 13 coupled with Section 151 of the Code of Civil Procedure (hereinafter referred to as C.P.C.) The court below has observed that when a party appears even as an Imposter, principle of Order IX, Rule 13 of the C.P.C. for setting aside a decree ex parte as a defendant cannot be made applicable. However, we find that there is fallacy in the order of the court below. The application is not only made under such order and rule alone but also being coupled with Section 151 of the C.P.C. Such section has independent face value. Section 151 of the C.P.C. speaks as follows:

151. Saving of inherent powers of Court- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

2. Therefore, it is clear that law is not only limited to the inherent power of the Court, but also to prevent the abuse of the process of the Court. Hence, when an application is made alongwith Section 151 of the Code, the Court is not so powerless that even if an imposter is entered, it will not be able to pass an appropriate order and show its helplessness.

3. Therefore, by disposing the appeal we hold and say that the order impugned is not apparently sustainable. Hence, the impugned order is set aside even at the stage of admission itself. As a result whereof we are of the view that the application should be reheard on contest upon notice and giving fullest opportunity of hearing to the contesting parties and by passing a reasoned order thereon within a period of one month from the date of communication of this order. Hence such order is passed hereunder.

4. Accordingly, the appeal is disposed of. No order is passed as to costs.

D.K. Arora, J.

I agree.

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