

Devi Deen Verma Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-08-2003

Reported in : 2004(2)AWC1150

Judge : Pradeep Kant and ;K.S. Rakhra, JJ.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13

Appeal No. : Special Appeal No. 500 of 2003

Appellant : Devi Deen Verma

Respondent : State of U.P. and ors.

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Ramesh Kumar Srivastava, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Pradeep Kant and K.S. Rakhra, JJ.

1. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents. Perused the record.

2. The appellant's application for restoration has been dismissed vide the impugned order dated 21.5.2003. The appellant has challenged the order of compulsory retirement which petition has been dismissed in default on 15.11.1995. The restoration was moved after a considerable delay and it appears that the appellant was required to submit medical certificate as the ground for absence was shown the illness of the appellant. However, medical certificate was not filed.

3. The learned single Judge dismissed the application for restoration on the ground that no evidence has been filed in support of the appellant's version about his illness.

4. Technically the view taken by the learned single Judge could not be taken as erroneous, but in a case where the matter is pending in the High Court, the illness of the client or the appellant, normally could not be a ground for the counsel not to appear. As the practice prevails, the litigant is not supposed to be present on every date on the call of the case in the High Court. The circulation of the cause list and the time which is ordinarily available with the counsel is apparently too short to inform the litigant/client of every date and for the client to reach the Court. The appearance of the litigant is also not necessary under the Rules of the Court in the High Court on the date when the case is fixed. A litigant has to engage a counsel and that is all that he has to do in the matter which is pending in the High Court. It is the duty of the counsel so engaged to appear on the call of the case and if by any reason he fails to appear the result is the dismissal of the case in default.

5. In these circumstances, once a litigant entrusts his matters to the counsel, whether he was ill or not, would lose all significance as it is the duty of the counsel to appear. It is also to be noted that the cases are dismissed in default generally for the absence of the counsel but when the restoration application is moved the responsibility is placed on the shoulders of the client by the counsel usually. Sometimes the information about dismissal of the case is sent very late to the client, who in turn, immediately approaches his counsel, but by that time considerable period already stands lapsed from the date of dismissal, which

makes the applicant highly belated.

6. We, therefore, find that the application for restoration has been dismissed on hyper-technical ground and the appellant could not be made to suffer for the fault of the counsel in attending the case, may be deliberate or otherwise. We, therefore, set aside the order dated 25.5.2003 and allow the application for restoration. The writ petition be restored to its original number and the same be listed within next two months before appropriate Bench for hearing.

7. The special appeal is allowed No orders as to costs.

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