

Ram Chandra Vs. Additional District Judge Xth and ors.

Ram Chandra Vs. Additional District Judge Xth and ors.

SooperKanoon Citation : sooperkanoon.com/494833

Court : Allahabad

Decided On : Oct-05-2006

Reported in : 2007(2)AWC1310

Judge : Rakesh Tiwari, J.

Appellant : Ram Chandra

Respondent : Additional District Judge Xth and ors.

Disposition : Petition allowed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.
2. It appears that Suit No. 139 of 1997 was filed by respondent No. 3 against the petitioner for eviction and recovery of arrears of rent before the Judge, Small Causes Court, Allahabad. In the aforesaid suit 22.4.1999 was fixed for evidence of the petitioner-tenant.
3. It is stated that when the case was called out, the counsel for the petitioner in the court below was on his legs in Court of IVth Additional District Judge and this position was never informed by the petitioner through Reader of the court below to the Presiding Officer. When the case was taken up again the petitioner who was

present in the Court again informed the Court that the counsel was now arguing before the Court of Special Judge and on his request the case was passed over. The petitioner stated that he thereafter went out to have a glass of water and in the meantime the case was called out and the evidence was ordered to be closed and the case was fixed for judgment. The counsel for the petitioner moved an application on the same day i.e. 22.4.1999 closing the evidence and for hearing for recalling the order dated 22.4.1999 which was rejected by order dated 28.4.1999.

The order dated 28.4.1999 is as under:

mHk; lk{kksa ds vf/koDrk mifLFkrA 43&x; }kjk izfroknh us vkns'k fnukad 22&4&1999 fu;r djds lquokbZ dk vuqjks/k fd;k g SA tks leu ls lefiZr gSa lquokbZ okn fu.kZ; gsrq lqjf{kr gS vr% 43&x; vLohd`rA

The judgment was delivered on the same day.

4. Aggrieved by the aforesaid order dated 28.4.1999 the petitioner preferred Civil Revision No. 510 of 1999 before the Revisional Court.

In para 3 of the memo of revision it has been stated that

3- ;g fd v/khuLFk U;k;ky; us fuxjkuh drkZ ds fo#) fnukad 22-4-1999 dks fuxjkuhdrkZ ds lk{; ds frfFk ij ,d lk{kh; pyus dk vkns'k ikfjr dj fn;k Fkk ftlds eqlw[kh gsrq fuxjkuhdrkZ us rdZ laxr vk/kkj ij fnukad 23-4-1999 dks izkFkZuk&lk;= izLrqr fd;k ysfdu v/khuLFk U;k;ky; us ml ij dksbZ vkns'k u ikfj djds egku Hkwy dh g SA

The revision was dismissed vide order dated 30.5.2001, hence this writ petition.

5. The contention of the counsel for the petitioner is that the revisional court has not considered the pleadings of the petitioner in para 3 of the memo of revision which was specifically argued bringing to the notice of the revisional court the circumstances under which the evidence of the petitioner was closed and he was deprived of the opportunity to lead evidence resulting in order from ex parte proceedings against which the revision was filed. It is stated that the revisional court without application of mind has mechanically upheld the order of the trial court dated 28.4.1999 vide order dated 30.5.2001.

6. The counsel for the respondents submits that both the courts below have given a finding of fact on the basis of record that the amount deposited by the petitioner under Section 30(1)(a) of U.P. Act No. 13 of 1972 was deficient and no evidence was required to prove this fact.

7. Be that as it may, a party is entitled to lead oral evidence in support of its case except where it itself does not want to lead evidence or where in certain circumstances the Court passed order depriving a party by a reasoned order.

8. In the instant case, it is not in dispute that the petitioner was present in the court below on the date when his evidence was closed even though he had informed the Court through the reader that the counsel engaged by him was on his legs in another Court. In these circumstances, opportunity to lead evidence was closed and reserving the judgment by rejecting his application to recall the order intimated on the same day amounts to denial of reasonable opportunity. The order dated 28.4.1999 rejecting the application for recall is unreasoned and laconic order. It is also not in dispute that after this information that the petitioner had gone to bring a glass of water and the case was again called out and opportunity to lead his evidence was closed and the judgment was reserved and delivered on the date fixed. The Judge Small Causes Court has also rejected the application of the petitioner for recall of the order dated 22.4.1999.

9. It appears that the court below has proceeded in the matter arbitrarily. If the petitioner was present in the Court, he ought to have been given opportunity to lead evidence in the case even it was ordered to be closed by the Court particularly when he had moved an application for recall of the order explaining the facts and circumstances in which the order had been passed. It is not a case where the party was deliberately adopting delaying tactics or was not present in the Court on the date fixed, hence such rigid attitude should not have been taken by the court below.

10. Too rigid an attitude sometimes may result in miscarriage of Justice. In the facts and circumstances of the case, I am of the opinion that the order dated 22.4.1999 was liable to be recalled and the petitioner should have been permitted to lead evidence. For these reasons, the order dated 28.4.1999 passed by the

Judge Small Causes Court, Allahabad and the order dated 30.5.2001 of the revisional court, Allahabad without considering the facts brought to its notice regarding the circumstance in which the order dated 28.4.1999 was passed are suffer from manifest error of law apparent on the face of record. The revisional court ought to have considered the facts and circumstances brought to its notice by the petitioner.

11. For the reasons stated above, the writ petition is allowed and the impugned orders dated 28.4.1999 and 30.5.2001 are quashed.

12. The parties are agreed that they will appear before the court below on the date fixed by this Court and will not seek any adjournment in the matter so that the dispute is decided at the earliest. The either of the parties will bring to the notice of the Judge Small Causes Court, Allahabad about the judgment of this Court passed today within a period of ten days from today. Thereafter the Judge Small Causes Court shall fix a date in the suit for evidence of the petitioner-tenant and shall decide the matter within a period of one month from today.

13. A certified copy of this Judgment shall be supplied to the counsel for the parties on payment of usual charges within 3 days.