

Davendra Singh Vs. Sukhrani and ors.

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Court : Allahabad

Decided On : Nov-14-2005

Reported in : II(2006)ACC11

Judge : V.C Misra, J.

Appellant : Davendra Singh

Respondent : Sukhrani and ors.

Judgement :

V.C. Misra, J.

1. Heard learned Counsel for the parties and perused the record of the case.
2. F.A.F.0.2370 of 2003 has been filed by the appellant against the judgment and award dated 30.5.2003 passed by the Motor Accident Claims Tribunal/ Additional District Judge, Kanpur Nagar, in Motor Accident Claims Petition No. 581 of 2000, Sukhrani v. Devendra Singh on 30.5.2003. This appeal was admitted and an interim stay order was passed staying operation of the aforementioned b impugned judgment and award dated 30.5.2003, inter alia, with the conditions that the appellant shall deposit entire amount of compensation with the concerned Motor Accident Claims Tribunal within eight weeks from that day and the claimants shall be entitled to withdraw 50% of the total amount under award in question without furnishing security and the balance 50% of the amount only on furnishing

security other than cash or bank guarantee on being so deposed by the appellant. It was also specifically provided in the said interim stay order that in case of default of any of the terms and conditions, the interim order shall automatically lapse and appeal shall be deemed to be dismissed for non-prosecution.

3. A short counter affidavit dated 11th September, 2005 has been filed on behalf of the respondents wherein at paras 2 and 3 it has been submitted that till date no amount has been deposited by the appellant in terms of the interim order dated 3.9.2003 passed by this Court in which it was mentioned that in case of default of the terms and conditions mentioned in the interim order, the interim order shall automatically lapse and appeal shall be deemed to be dismissed for non-prosecution. Copy of this counter affidavit was served upon the learned Counsel appearing for the appellant on 15.9.2005, as is evident from the endorsement on the short counter affidavit but no reply to the same has been filed so far by the appellant.

As per Chapter 22 Rule 4 of the Rules of Court, 1952 unless otherwise ordered, the counter-affidavit shall be filed not more than three weeks after the service of notice and the rejoinder thereto shall be filed not more than two weeks after the service of the copy of such counter-affidavit on the applicant. In view of ' the settled law since no rejoinder affidavit has been filed by the appellant in rebuttal to the averments made in the counter affidavit at paras 2 and 3, the averments so made are treated to be true and correct. A Division Bench of this Court in Jang Bahadur Singh and Anr. v. State of U.P. and Anr. reported in 2002 (1) UPLBEC 55, has held as under:

Under Rule 4 Chapter 22 of the Rules of Court, 1952, rejoinder affidavit of the petitioner, in answer to the counter affidavit of the respondent, has to be filed within two weeks after the service of the copy of the counter-affidavit on the petitioner. In this case...the averments contained in the counter affidavit of the respondents remain uncontroverted, and are accepted to be correct.

4. Considering the aforementioned circumstances of the instant case particularly uncontroverted averments made in paras 2 and 3 of the counter-affidavit I am of the view that the appellant has failed to comply with the directions issued by this

Court in the order dated 3.9.2003 in which it has been specifically provided that in case of default of any of the terms and conditions, the interim order shall automatically lapse and appeal shall be deemed to be dismissed for non-prosecution.

5. Such being the position, the appeal stands dismissed and the interim order granted on 3.9.2003 by this Court in the present appeal is hereby vacated. There will be no order as to costs.

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