

Jagmal Vs. Tula Ram

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Court : Delhi

Decided On : Aug-06-2003

Reported in : 2003VAD(Delhi)608; 106(2003)DLT322; 2003(70)DRJ284

Judge : S.K. Mahajan, J.

Appeal No. : FAO 230/2002

Appellant : Jagmal

Respondent : Tula Ram

Advocate for Def. : Gayander Singh, Adv.

Advocate for Pet/Ap. : R.K. Bhardwaj, Adv

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

1. ADMIT.

2. The appellant has filed this appeal challenging the order passed by the learned Additional District Judge on the application of the appellant for readmission of the appeal which was dismissed in default on 24th August, 2003.

3. The case set up by the appellant in the application before the Additional District Judge was that the appeal was fixed for hearing on 24th August, 2003 when the son of the appellant who was also his attorney appeared before the court at 11.00 AM and requested for adjournment for filing documents. It was stated in the application that the case on such a request being made was adjourned to 23rd November, 2001. The son of the appellant after noting this date informed the counsel about the case having been adjourned to 23rd November, 2001 and the counsel made an entry of that date not only on the file of the case but also in his diary. It is submitted that when the appellant appeared in court on 23rd November, 2001 he did not find the case in the cause list of the court and on enquiries he came to know that the appeal was dismissed in default on 24th August, 2001. Immediately on coming to know of the appeal having been dismissed on 24th August, 2001, the appellant filed an application before the Additional District Judge for restoration of the appeal. It was submitted that due to some misunderstanding the son of the appellant had noted the next date of hearing as 23rd November, 2001 though the matter was not adjourned to the said date but was only passed over.

4. The application was opposed by the respondent. It was stated in reply that the application was barred by time inasmuch as the appeal was dismissed on 24th August, 2001 whereas the application was filed on 27th November, 2001. It is also stated that neither the son of the appellant nor any other person appeared before the court on 24th August, 2001 and there was thus no question of filing any documents before the court. It is thus submitted that no case was made out by the appellant for readmission of the appeal.

5. Learned Additional District Judge dismissed the application by the impugned order after holding that it was highly improbable that an impression was gathered that the court had adjourned the case when in fact it was passed over to be taken up later in the day. It was also held by the learned Additional District Judge that the affidavit should have been filed by the appellant himself and he having not done so, no proper affidavit was filed and as such the application itself was not maintainable. As already mentioned this order has now been challenged by filing the present appeal.

6. A perusal of the file of the learned Additional District Judge shows that not only that the application was supported by the affidavit of the son of the appellant but the photocopies of the diary of the counsel as well as the file cover were also placed on record to show that on 24th August, 2001 the matter was carried over to 23rd November, 2001. When the son of the appellant had stated to have appeared before the learned Additional District Judge it was only he who could file an affidavit as to what happened before the court. It is not the case of the appellant that he was present before the court on 24th August, 2001 or that it was he in his presence that the matter was adjourned to 23rd November, 2001. The appellant himself was not aware of the proceedings that had taken place in court on 24th August, 2001 and he in my opinion was thus not in a position to file an affidavit in the court. The affidavit having been filed by the person who was present in court and who states that the matter was adjourned to 23rd August, 2001, no further affidavit was required to be filed by any other person. The learned Additional District Judge has therefore clearly erred in holding the appellant should have himself filed an affidavit and he having not filed the same the appeal was not maintainable. This finding of the learned Additional District Judge cannot be sustained.

7. Since the application was supported, as already mentioned above, by not only the affidavit of the son of the appellant but the photocopies of the case diary of the counsel as well as the file cover were also filed to prove that in fact by inadvertence the son of the appellant as well as the counsel had noted the next date of hearing as 23rd November, 2001, in my opinion, the court in the larger interest of justice ought to have considered this to be a sufficient ground for recalling the order dated 24th August, 2001 and restoring the appeal to its original number. The objects of the courts is to decide the rights of the parties and not to punish them for the mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Courts must make an endeavor to do substantial justice between the parties and not decide their cases on technicalities. Since in my opinion sufficient case had been made out for restoration of the appeal, I allow this appeal, set aside the impugned order and restore the appeal before the Additional District Judge to its original number subject however to payment of Rs.5000/- as costs. The files of the trial court as

well as of the first appellate court be sent back immediately. Since the appeal is pending before the first appellate court since 1996 I direct the first appellate court to make an endeavor to dispose of the same at the earliest but not later than six months from the date of the receipt of the file by the trial court.

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