

Bairilal Vs. Rich Ram

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Court : Rajasthan

Decided On : Dec-01-1981

Reported in : 1981WLN633

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil Revision Petition No. 583 of 1981

Appellant : Bairilal

Respondent : Rich Ram

Disposition : Petition dismissed

Judgement :

G.M. Lodha, J.

1. A typical rackless negligence of non filing of written statement for 15 months, after about a dozen adjournment including there with costs resulting in exparte proceedings, and yet invoking revisional jurisdiction to put premium on such lethargy, inaction and negligence by making the counsel scapgoat for setting aside exparte order, is the extra ordenary prayer in this petition under Section 115 C.P.C.

2. And now the facts: A suit for ejectment was filed by the plaintiff. The defendant who is the petitioner before this Court put up appearance on February 11,1980,

though Mr. P. Gadaria and prayed for time to file written statement.

3. The defendant having failed to file written statement, another adjournment was granted on payment of cost of Rs. 15/--, but on May 27, 1980, no written statement was filed and the case was adjourned to August 12, 1980 to enable the petitioner to file written statement. The defendant having failed to file written statement was granted yet another adjournment on payment of the cost of Rs. 10/- & the case was then taken up on September 22, 1980 but even then written statement was not filed, on 30th September, 1980. Yet another adjournment was granted on payment of cost of Rs. 50/- and the case was fixed for October 14, 1980 but neither the defendant nor the counsel appeared on October 14, 1980, with the result that *exparte* proceedings were taken.

4. An application for setting aside *exparte* decree was then filed on May 19, 1981 in which it was mentioned that the learned Counsel for the defendant has failed to give him legal advice. The trial court was of the opinion that it was the duty of defendant to have contacted his counsel, after giving *Vakalatnama*.

5. It was found that after about 15 months the case remained pending for filing of written statement and as mentioned above, where as adjournments were granted on payment of cost sometimes but even then the written statement was not filed. The trial court was of the view that in these circumstances it is impossible to believe that the defendant was unaware of the proceedings. A positive finding has been given that the defendant was guilty of gross negligence and now he wants to shift his responsibility to his counsel, which is not tenable.

6. The revision application has been filed in this court against the judgement dated October 22, 1981. Before the appellate Court it was argued that it was the duty of the counsel to have informed the client but the Additional Civil Judge was of the opinion that in the facts and circumstances of the case as many adjournments were given for filing of written statement and yet defendant did not avail of them, it is not fair to shift the liability and responsibility of the negligence of the counsel for his own negligence. The first appellate court was of the view that the defendant has failed to give any reason why he could not contact his counsel and what were those normal reasons. The first appellate court was also of the view that the

application for setting aside ex parte decree was time barred and no reasons have been given for the delay of four days after getting information about the decree Mr. Keshote invited my attention to the judgment of Hon'ble the Supreme Court in Rafiq an and Ors. v. Munshilal and Anr. : [1981]3SCR509 , in which the following observations were made:

The Supreme Court in appeal set aside both the orders of dismissal on ground that a party who, as per the present adversary legal system, has selected his advocate, briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate omission or misdemeanour of his counsel.

7. He has also submitted that the written statement was signed but it was not produced by the counsel and, therefore, his client was not responsible for it. Mr. Keshote pointed out that it was a hard case where a litigant is being deprived of his premises on account of negligence of his counsel.

8. I have carefully considered the above submission of Mr. Keshote and the judgments of both the courts. Undoubtedly their lordships of Hon'ble the Supreme Court in Rafiq's case have pointed out that in the practice which is being in vogue in the conduct of cases of appeals, all that is required by the client is to engage his counsel and pay his fees and leave it to him. In such circumstances, if the appeal is dismissed in the absence of his counsel, then due to the present legal system the client should not be deprived of his right to get a decision on merits.

9. However, those principles cannot apply in original case, where a litigant is required to file written statement and then prosecute the case for the purpose of doing several things, like filing of documents, list of witnesses, producing evidence etc.

10. In the instant case both the lower courts have held that a number of adjournments were granted and the defendant cannot be allowed to shift the responsibility of his negligence on his counsel because inspite of that no written statement was filed.

11. This is a finding which suffers from no error of jurisdiction and cannot be said to be perverse, although in the facts and circumstances of the case it may cause hardship to a litigant. However, I am convinced that it is not possible to believe, as correctly held by both the courts below that a litigant in the original suit, where even written statement has yet to be filed, would not take any action what so ever for a period of 15 months and the counsel would go on assuring him that everything is done and he need not bother for the case.

12. Mr. Keshote pointed out that there was some other appeal in which the petitioner was depositing the rent and therefore, he was contacting the counsel all right. Be that as it may, the basic fact remains that the concurrent finding of both the courts about negligence of the petitioner in not filing the written statement for more than a year, is not possible to be explained by a bald statement that the counsel did not give instructions. The concurrent finding of both the courts about negligence of the petitioner in not riling the written statement for more than a year, is not possible to explained by a bald statement that the counsel did not give instructions. May be that, it is unfortunate but that is on account of lack of vigilance of the petitioner.

13. Mr. Keshote read before me the affidavait filed before the trial court and no where mentions that written statement was signed by the defendant and given to his counsel, who failed to file it. That clearly goes to show that whatever reason may be, the petitioner did not prosecute the case at all because, filing of written statement is the first step and preparation of written statement usually requires discussion between the client and counsel, because various pleas are taken only on that basis.

14. I am convinced that no interference can be made in revisional jurisdiction, as not only there is no error of jurisdiction but the defendant himself has not acted vigilantly and has been rightly found to be guilty of in action and persistent negligence.

15. A litigant should always remain vigilant and careful in the conduct of casts and this Court would not put any premium on the conduct of such negligent litigant who fail to file written statement for many months. The proverbial delay indisposal is

partially due to grant of frequent adjournments and condoning negligence. No case should be adjourned without sufficient cause and in no case repeatedly, as was done in the present case. Eternal vigilance by the trilogy of litigants, lawyers and judicial officers, is the need of the day, if peoples' confidence in judicial process is to be restored.

16. Mr. Keshote prays that he has not vacated the premises so far and some time may be allowed to vacate the premises. It is directed that in case the premises have not been vacated so far, the petitioner may be allowed six months time to vacate the premises, from today.

16. The result is that the revision application fails and is hereby dismissed.

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