

Kanha Vs. Ram Swaroop

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Court : Rajasthan

Decided On : Oct-03-1991

Reported in : 1991WLN(UC)450

Judge : R.S. Kejriwal, J.

Appeal No. : S.B. Civil Revision Petition No. 647 of 1987

Appellant : Kanha

Respondent : Ram Swaroop

Disposition : Petition dismissed

Judgement :

R.S. Kejriwal, J

1. The revision has been directed against the order dated 4.8.1987, passed by Workmen's Compensation (Commissioner), Kota, in Claim Pet. No. 1/82.

2. The brief relevant facts of the case are that the non-petitioner filed a claim petition before the Commissioner, Workmen's Compensation. Notice was duly served on the petitioner who also filed written statement. The case was fixed on 13.6.85 but none was present on behalf of the petitioner before the said Commissioner. Consequently, the Commissioner passed an order to proceed exparte Ultimately, the claim was decreed exparte on 21.12.1985 when the

petitioner failed to deposit the amount in pursuance of the order dated 21.12.1985. Notice was issued on 1.4.1986 to the petitioner. In reply to the said notice, the petitioner submitted an application on 17.4.1986 for setting aside the order dated 13.6.85 and also the exparte decree/order dated 21.12.1985. The Commissioner, Workmen's Compensation rejected the application of the petitioner on the ground that the petitioner did not file any affidavit of his counsel before him and further that the authority reported in : [1981]3SCR509 Rafiq and Anr. v. Munshi Lal and Anr. was not applicable to the proceedings of the trial court but is applicable only to appeals. This order has been challenged before this Court in revision by the petitioner.

3. Counsel for the petitioner Mr. Kasliwal argued that there was no negligence on the part of the petitioner. The Petitioner was given assurance by his counsel to appear before the Commissioner as and when the case was called and there was no necessity of the petitioner to appear on each and every date fixed in the case. He further argued that the petitioner also submitted his affidavit in support of his application. He argued that the petitioner should not suffer on account of negligence if any on the part of his counsel. In support of his argument, he placed reliance on the judgment of Apex Court in the case of Rafiq (Supra).

4. On the other hand Mr. Rastogi, counsel for the non-petitioners argued that the aforesaid authority is not applicable to the trial courts where the dates are fixed for various purposes and presence of the party is required. The said authority is applicable only to appeals where there is no necessity of appearance of the parties and only the arguments are heard in appeal. He further argued that the petitioner has not submitted any affidavit of his counsel to show that he gave any assurance to the petitioner as stated by the petitioner.

5. After hearing learned Counsel for the parties, I agree with the arguments advanced by the counsel for the non-petitioners that the aforesaid authority of the Hon'ble Supreme Court is not applicable to trial courts where the dates are fixed for various purposes and presence of the parties is required. The authority of Hon'ble Supreme Court is applicable only to appeals where the presence of the parties is not required and only the arguments are heard.

6. Consequently, I find that the Commissioner of Workmen's Compensation has not committed any jurisdictional error and as such there is no force in the revision and the same is dismissed.

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