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Court : Rajasthan

Decided On : Apr-01-2009

Reported in : 2009(2)WLN529

Judge : R.S. Chauhan, J.

Appellant : Prabhu Narayan and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

R.S. Chauhan, J.

1. Aggrieved by the order dt. 09.05.2002 whereby the Board of Revenue ('the Board', for short) had dismissed the second appeal filed by the petitioners for non-prosecution and by the order dt. 05.09.2002 whereby the Board had refused to restore the second appeal, the petitioners have knocked the doors of this Court.

2. The Brief facts of the case are that on 14.01.1991, the petitioners-plaintiffs filed a suit for declaration and perpetual injunction in the Court of learned Assistant Collector, Chaksu Camp- Sanganer against the defendants. The defendants filed their written statements in the case denying all the averments made in the plaint. Subsequently, the case was transferred to the learned Assistant Collector

(Trainee), Jaipur. Vide judgment and decree dt. 24.09.1994, the learned Assistant Collector dismissed the suit without affording any opportunity to the petitioners-plaintiffs to lead their evidence. Against the judgment and decree dt. 24.09.1994, the petitioners-plaintiffs filed an appeal before the Revenue Appellate Authority, Jaipur ('the RAA', for short). But the learned RAA dismissed the appeal vide judgment and decree dt. 15.07.1997. Consequently, the petitioners filed a second appeal against the judgment dt. 15.07.1997 before the Board of Revenue for Rajasthan, Ajmer. On 10.01.2002, the petitioners engaged Shri Sunil Pareek, Bhanu Pareek and Satish Pareek, Advocates, on their behalf to represent them before the Board. Since, the petitioners resided far away from Ajmer, the petitioner's counsel had assured them that they need not bother about their presence before the Board on the dates of hearing and their advocates will appear on their behalf. The lawyers assured them that they will comply with the various orders from time to time which may be passed by the learned Board. Thereafter, the petitioners have come to know that on 21.03.2002, the petitioner's counsel had been directed by the Board to submit the notices for the respondent. But the counsel for the petitioners did not comply with the same. The petitioners have further come to know that vide order dt. 09.05.2002, the second appeal filed by them was dismissed for non-prosecution because the notices for non-petitioners had not been submitted till then. The petitioners have also come to know that on 23.05.2002, their counsel submitted an application before the Board for restoring the aforesaid second appeal dismissed on 09.05.2002 on the ground that the mistake committed by the counsel was bona fide and not deliberate and the same was liable to be condoned. The said application was supported by the affidavit of the counsel for the petitioners Shri S.C. Pareek. But vide order 05.09.2002, the Board dismissed the application. Hence, the petitioners have filed the present petition before this Court.

3. Mr. K.K. Mehrishi, Sr. Advocate, has vehemently contended that the sole purpose of the Judiciary is to do justice to the people. In the judicial process, the illiterate and poor litigants are solely dependent on the service of their lawyer. Once the litigant has entrusted the case to his lawyer, it is for the lawyer to discharge his professional duties towards the litigant. But many times, the lawyers fail to live up to the expectations of the noble profession. But merely because of

the failure of the lawyer, the poor litigant should not be made to suffer. Secondly, while doing justice to the poor litigant, technicalities should not be permitted to act as hurdles. Thirdly, both the impugned orders have been passed under hyper-technical attitude. Fourthly, if hyper-technical attitude is permitted and the course of justice is impeded, the litigant, in particular, and the public, in general would lose faith in the judicial process. Thus, the very foundation of the Judiciary would be shaken. Lastly, for no fault of the litigant, the litigant is being made to suffer.

4. On the other hand, Mr. Pawan Sharma and Mr. Mahendra Goyal, the learned Counsel for the respondents, have strenuously argued that the second appeal was pending before the Board since 1997. Although the notices were issued to the respondents in 1997, the petitioners did not file the proper notices for the respondents. Therefore, their negligence is almost criminal. Secondly, the counsel for the petitioners has not given any cogent reasons for the inordinate delay in filing the notices. Hence, the Board was justified in dismissing the second appeal for non prosecution and in refusing to restore the said second appeal to its original number. Thus, the learned Counsels have supported the impugned orders.

5. Heard the learned Counsel for the parties and perused the impugned orders.

6. While adopting the Constitution of India, 'We the people' have reposed an onerous responsibility on the Judiciary. The Judiciary is not only the arch angle for the protection of the rights of the people, but most importantly has to do complete justice to the people. Doing justice is a divine function, which has been bestowed on every single judicial or quasi-judicial officers. While discharging his divine duties, the vision cannot be myopic, but has to be holistic in nature. The Presiding Officer, be they judicial officers or quasi-judicial officers, have to be sensitive to the plight of the people, to the hapless condition of the people and to their own constitutional duties. While doing complete justice to the people, the technicalities of law should not torpedo the flag-ship of justice. Since no human system is perfect, the inefficiency, the dereliction of duties, need to be overlooked at times. The fault on the part of a lawyer should not be used as a justification for shutting the doors of the Court to the faceless and voiceless litigant who has come to the Court seeking refuge. In case, the doors of the Court are shut, the litigant, in

particular, and the public, in general would see such an action as a sign of judicial arrogance. The Judiciary is the servant of the people. Its hallmark is patience, impartiality, sensitivity, and delivery of justice. It cannot afford to be arrogant, to be ruthless, to be apathetic towards the people. For, the very foundation of the Judiciary is the faith of the people in the judicial system.

7. While dealing with the plight of the litigant, the above principles should be borne in mind. In the present case, undoubtedly, the second appeal had been filed in the year 1997. Admittedly, it is the duty of the lawyer to file the notices as soon as notices are issued by the Court. But merely because, the notices were not filed by the lawyer, the case of the litigant cannot be ejected from the Court. The Board should have shown a certain degree of patience while dealing with the faults of the lawyer. Afterall, the Board cannot be oblivious of the fact that it deals with the land and livelihood of the people who are dependent on the land. Thus, it deals with the economic life and death of the litigant. Therefore, it should not sound the economic deathknell of the litigant, for no fault of his own. The Board has ample powers to impose cost on the defaulting lawyer for having disobeyed the directions of the Board. Therefore, the Board should have combined mercy with justice.

8. In the result, this petition is, hereby, allowed. The orders dt. 09.05.2002 and 05.09.2002 are, hereby, quashed and set aside. The Board is directed to restore the second appeal to its original number and to give a last opportunity to the petitioner to submit the legal notices for the unserved respondents. There shall be no order as to costs.