

Sh. Sheo Raj Vs Sh. Hans Raj and anr

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Court : Delhi

Decided On : Aug-02-2010

Judge : Mr. V.B.Gupta. J.

Appeal No. : CRP No. 162/2009

Appellant : Sh. Sheo Raj

Respondent : Sh. Hans Raj and anr

Advocate for Def. : Mr. P.D. Gupta , Mr. R. K. Gupta, Adv.

Advocate for Pet/Ap. : Mr. I. J. S. Mehra, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

ORDER

1. Present revision petition has been filed under Section 115 of Code of Civil Procedure (for short as Code) challenging judgment dated 29th October, 2009 passed by Additional District Judge, Delhi and orders dated 24th April, 2009, 5th

May, 2009 and 20th May, 2009, passed by Civil Judge, Delhi.

2. Petitioner herein, filed a suit for recovery against respondent in the year 1993.

3. On 25th April, 2009 that suit was dismissed in default due to non- appearance of the petitioner and his counsel.

4. Thereafter, petitioner filed an application under Order 9 Rule 9 of the Code for setting aside order dated 25th April, 2009. That application was also dismissed in default on 5th May, 2009. Again petitioner filed an application under Section 151 of the Code for setting aside order dated 5th May, 2009. This application was dismissed by the trial court, vide impugned order dated 20th May, 2009.

5. Petitioner filed an appeal against order dated 25th April, 2009 of the trial court.

6. First appellate court, vide impugned order dated 29th October, 2009, dismissed the appeal.

7. It is contended by learned counsel for petitioner that non appearance of the petitioner and his counsel on 25th April, 2009 and 5th May, 2009 was bonafide and was not willful or deliberate. Petitioner was assured by his counsel that he would represent him in his absence on 25th April, 2009. As such petitioner could not appear on that date.

8. It is further contented that counsel for petitioner was held up in other case and could not appear on 25th April, 2009 and 5th May, 2009. Counsel also submitted his case diary with details of cases listed for 25th April, 2009, in different courts. Since non appearance of the petitioner and his counsel on 25th April, 2009 and 5th May, 2009, was bonafide, so there was sufficient ground for allowing this petition.

9. On the other hand, it is contended by learned counsel for respondents that suit was filed by the petitioner in the year 1993. It is the petitioner who himself is getting the trial delayed. After dismissal of the suit, petitioner filed application for restoration which was again dismissed in default due to non appearance of petitioner and his counsel. So, there is no sufficient ground for restoration. This

shows that petitioner is quite negligent and careless in pursuing its case. There is no ambiguity or illegality in the impugned orders passed by the trial court.

10. Petitioner has not placed on record copies of application filed under Order 9 Rule 9 of the Code, as well as application under Section 151 of the Code, to show as to what grounds he had taken in these applications for his non appearance. Nevertheless, both the courts below, in their orders have mentioned detailed reasons for non appearance of the petitioner.

11. Order dated 20th May, 2009 of the trial court read as under; "None through the application U/s 151 CPC for setting aside order dated 05/05/09 by which application U/O 9 R. 9 on 25/04/09, along with reasons mentioned in the application. Due to non appearance on behalf of plaintiff on 05/05/09, the application U/O 9 R. 9 CPC was dismissed. No documents are annexed in support of the contention along with the application for not appearing on the previous dates and the reasons mentioned in the application has not inspire confidence accordingly. This also reflects the very casual approach of the plaintiff and want of due diligence in prosecution of the matter. Nothing is explained else by the plaintiff in support of contention nor any reason is explained for not appearing by the plaintiff when the suit was dismissed for non appearance on 25/04/09. I do not find any merit in this application. The application is accordingly dismissed."

12. While, relevant portion of Judgment dated 29.10.2009 of Additional District Judge reads as under:

"A perusal of order dated 25.04.09 shows that on the date fixed none appeared on behalf of plaintiff since morning and even none appeared on the last date fixed for hearing and after waiting and repeated calls since morning the suit was dismissed for non-prosecution. Thereafter, when the file was taken by trial court upon an application u/o 9 rule 9 r/w section 151 CPC for setting aside the order dated 25.04.09, none appeared on behalf of plaintiff/appellant and the application was accordingly dismissed in default for non-prosecution. Subsequent thereto, another application u/s 151 CPC for setting aside the order dated 05.05.09 before the trial court, once again none appeared on the date fixed and it was observed by Id trial court that no documents are annexed in support of the contention raised and

application does not inspire confidence. It also reflects the very casual approach of the plaintiff and the application as dismissed without finding any merits including these observations.

In a civil suit, the plaintiff is the author of his case. It is he who puts into motion the entire case. If he shows lack luster approach and does not pursue his case it not only waste the court time but also cause hardship to the defendants. The solitary incident can be liberally condoned. But if it becomes a habit and repeated again and again, the court cannot sit idle and allow it to happen. The court is under duty to ensure that such attitude would not allowed to be perpetuated. So, in these premises, no premium can be given to the lack luster approach of the plaintiff/appellant. I do not find any infirmity in the order passed by Ld. Trial court which warrant interference."

13. In the proceeding before the trial court petitioner has nowhere mentioned any reason for his non appearance in the court on various dates. As apparent from the record, petitioner never appeared on any of these dates. CRP No.162/2009 Page 5 of 7

14. It is well settled that failure of lawyer to appear is necessarily not a sufficient cause, conduct of parties has also to be seen.

15. In New Bank of India v. M/s. Marvels (India) and Others' 2001 VI AD (Delhi) 536 this Court observed;

"There is no absolute proposition of law that all cases of mistakes on the part of the advocate or pleader would constitute sufficient cause. What is to be seen is as to whether absence of the advocate was bonafide. This is to be examined in conjunction with the conduct of the party who had engaged advocate viz. whether he was perusing his case diligently or the conduct and approach was so callous that it amounted to negligence. If this is so then non-appearance would not be bonafide and it would not constitute sufficient cause within the meaning of Order IX Rule 13 of the Code of Civil Procedure."

16. It was further observed; "No doubt the words "sufficient cause" should receive liberal construction so as to advance substantial justice. However when it is found that the applicants were most negligent in defending the case and their non-action and want of bonafide are clearly imputable, the Court would not help such a party. After all "sufficient cause" is an elastic expression for which no hard and fast guide-lines can be given and Court has to decide on the facts of each case as to whether the defendant who has suffered ex-parte decree has been able to satisfactorily show sufficient cause for non- appearance and in examining this aspect cumulative effect of all the relevant factors is to be seen."

17. Lastly, the scope of this Court under Section 115 of the Code is very limited. Here, there are concurrent findings of the two courts below. I do not find any reason to disagree with their reasoning.

18. Thus, after going through the record it transpires that no sufficient cause has been shown by the petitioner for his non appearance in the trial court on various dates. Trial court rightly dismissed the applications for restoration. Similarly, no fault can be found with the order of the first appellate court.

19. Since there is no merit in the present petition, the same is hereby dismissed.

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