
(1954) 07 CAL CK 0039
In the Calcutta High Court
Case No : Civil Rule No. 263 of 1954

Ali Mondal

APPELLANT

Vs

Kazi Golam Bari and Others

RESPONDENT

Date of Decision : 13-07-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152

Citation : AIR 1955 Cal 526 : 59 CWN 513

Hon'ble Judges : Renupada Mukherjee, J

Bench : Single Bench

Advocate : Bhabesh Chandra Mitter, for the Appellant; Barun Kumar Roy Chaudhury, for the Respondent

Judgement

Renupada Mukherjee, J.—This Rule was issued at the instance of one Syed Ali Mondal under the following circumstances.

2. Syed Ali Mondal was the purchaser of some properties sold at a Court sale held in Rent Execution Case No. 649 of 1952 in the Court of the 2nd Munsif, Baraset. Thereafter the judgment-debtors filed an application on 17-3-1953 for setting aside the sale u/s 174(3), Bengal Tenancy Act. An objection was filed to that petition by auction-purchaser Syed Ali Mondal on 2-5-1953. Notices were thereafter issued to the persons who were made opposite parties in the sale set aside case.

But it appears that the notice was duly served on opposite party No. 5 who was subsequently made a party in that case. The result was that on 3-10-1953, the Court recorded an order, in the order-sheet directing the petitioner to take steps for fresh service of a registered post card upon the above opposite parties by 14-11-1953. On that date the petitioners filed hajira but did not take any steps for service of fresh notice by registered post as they had been directed to do by the order of the previous judge and so the case was dismissed for non-prosecution,

On 19-11-1953 the petitioners filed an application which purports to be one u/s 151, Civil P. C. for restoration of the case to file on the ground that in the daily cause list the case was noted only for taking steps. It appears that this application was shown to the learned Pleader who had till then been acting on behalf of Syed Ali Mondrd and he noted in the margin: "Seen. Strongly objected to."

On the same day viz. on 19-11-1953, the Court duly considered this application and recorded an order setting aside the order of dismissal for non-prosecution and restoring the case to file. Among other observations it was staled by the learned Munsif that the order passed in the order sheet of the case on 3-10-1953 for issuing fresh notice by registered post was not notified to the party in the daily cause list and so the prayer of the petitioners for restoration of the case could not be refused because it was the duty of the Court to correct its own mistake.

3. The present application has been filed in this Court challenging the propriety and legality of the above order.

4. Mr. Mitter appearing on behalf of the petitioner made several submissions before me. He contended in the first place that there was really no mistake on the part of the Court because the case was mentioned in the daily cause list and it was the duty of the judgment-debtors" pleader to refer to the order-sheet and to take such steps as the petitioners had been directed to take by the order dated 3-10-1953.

In my judgment, this contention of Mr. Mitter cannot be accepted. The daily cause lists are maintained according to the Civil Rules and Orders and parties generally take their steps in judicial proceedings according to the entries made therein. The fact that in the daily cause list, the judgment-debtors were directed only to lake steps must have misguided them. The order-sheet of the trial Court shows that as a matter of fact the petitioners did file their hajira on 14-11-1953 on which date the Miscellaneous Case was dismissed for non-prosecution.

As the note in the daily cause list was neither specific nor clear, the petitioner could not take suitable steps in the case. The learned Munsif also thought that the above entry in the daily cause list did not enable the petitioners before him to take the required steps. He further thought that the vague and insufficient entry was due to a mistake on the part of the Court. In these circumstances, I am of opinion that the trial Court was justified in not allowing the judgment-debtors to be prejudiced in any way by an omission on the part of the Court.

5. The next point urged on behalf of the petitioner by Mr. Mitter was that in any case this was not a matter which could be rectified u/s 151, Civil P. C. and that the judgment-debtors could have preferred an appeal for obtaining proper relief. I do not agree with this contention because the order of the Munsif dismissing the case for non-prosecution was the direct result of a mistake committed by some officer of the Court.

That being the case, the Court could grant a relief to the judgment-debtors and correct its mistake under the provisions of Section 151, Civil P. C.

6. Lastly it was contended by Mr. Mitter that in any case the order in question should not have been set aside and the case should not have been restored to his without giving a formal notice to his client In support of this contention Mr. Mitter drew my attention to case of -- Narayana Chettiar and Another Vs. P.C. Muthu Chettiar and Others, (A). In that case an application for execution of a decree was dismissed owing to the absence of the decree-holder's pleader on the date of hearing.

On the same day, the application was restored on the application of the pleader without notice to the judgment-debtors. It was, therefore, held that the order passed without notice was not merely irregular but illegal and the judgment-debtors were not bound by it. The facts of the case cited by Mr. Mitter are quite different from the facts of the present case. In the case cited by him the execution, case was dismissed owing to the absence of the decree-holder's pleader.

There was no omission or mistake whatsoever on the part of the Court. In the present case, the judgment-debtors who were petitioners before the trial Court filed their hajira on the date in question but they could not take requisite steps owing to a vague and insufficient entry in the daily cause list which was prepared by an officer of the Court and from which pleaders and their mohurers generally make their tadbirs in suits and other proceedings.

The order whereby the Miscellaneous Case was dismissed for non-prosecution appears to be the direct result of the above misleading entry. In these circumstances, it was not necessary to issue any notice to the other party and the Court was entitled to correct a mistake which was due to the laches of its own officer. Moreover the record would show that notice in some form was actually issued and the application which was filed on 19-11-1953 for restoration of the case was actually shown to the pleader who was acting on behalf of the petitioner of this Court.

That being the case, there is no ground for sending back the application for fresh hearing by the Munsif after giving formal notice to the present petitioner, as was prayed for on his behalf.

7. On the whole I do not find any justifying reason for interfering with the order passed by the learned Munsif which seems to have been passed u/s 151, Civil P. C. after due exercise of his jurisdiction.

8. The Rule is, accordingly, discharged.

9. In the circumstances of the case I do not make any order as to costs.

10. Let the records be sent down to the Court concerned at a very early date.