

(2011) 03 AHC CK 0379
In the Allahabad High Court
Case No : Consolidation No. 2413 of 1982

Ashok Kumar Singh and Others

APPELLANT

Vs

Deputy Director of Consolidation and Another

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Citation : (2011) 112 RD 626

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—This is a second application for recall of the order. The petition was dismissed in default on 7.5.2010. The Petitioner moved an application for restoration on 17.8.2010 on the ground that the Counsel could not mark the case in the cause list and it was due to the oversight of the Counsel that the matter was dismissed in default. Unfortunately, this application was again dismissed on 3.9.2010. This second application has been moved by the Petitioner on 6.9.2010 on the ground that the Counsel for the Petitioner had developed high blood pressure on that fateful day and the petition was dismissed in default. In both the applications learned Counsel has taken the responsibility on his personal conduct.

2. This second application has been vehemently opposed by Sri Suresh Sharma, who says that this second application for recall is not maintainable. He says that the lower Court in the meanwhile has proceeded in the matter. He argues that if the petition is restored it will be construed by the lower courts that the proceedings thereon should be stopped, hence the application should not be allowed and it should be rejected.

3. Petitioner Counsel has argued that counsels are sometimes in such a situation where mistakes and oversights are quite possible. The client, who is sitting far away may not be punished for the conduct of the counsel. In the present case,

personal ground has been taken on both occasions.

4. No encouragement can be given by this Court for neglect and default of the Counsels, yet, a hard reality of the situation can not also be overlooked. The argument of learned Counsel for the opposite parties is quite correct that second application is not maintainable. The Court is not giving finding on this count also.

5. The Petitioner counsel has referred to case law reported in Ram Kumar Gupta v. Har Prasad and Anr.¹ in which second application for restoration was allowed by Hon"ble Supreme Court at the cost of Rs. 10,000/-. Although this judgment has been passed in the peculiar circumstances of the case and it has not laid down any ratio yet the Counsel for the Petitioner has been able to demonstrate that in exceptional circumstances the Courts can indulge to some extent in entertaining the second application for restoration. The Court feels that the present case in hand also deserves compassionate treatment.

6. The Court can not restrain itself from making a comment upon the conduct of the Counsel, which has not been up to the mark. Once a petition is dismissed and an application is moved by the Counsel for restoration, he should be doubly vigilant that the application for restoration does not get dismissed in default. Dismissal of this application indicates that the Petitioner as well as his Counsel have not been diligent and interested enough to prosecute the matter. Yet on medical ground unfortunate circumstances can happen and in the present case Counsel for the Petitioner has submitted that he was suffering from blood pressure and heart ailment and suddenly he went home.

7. Under the circumstances, the Court feels that it is a fit case where application should be allowed. Accordingly, the order of dismissal of the writ petition dated 7.5.2010 as well as the order dated 3.9.2010 dismissing the application for recall of dismissal order are hereby recalled.

8. The petition is restored to its original number. However, the Petitioner shall pay a sum of Rs. 1000/- to the opposite party by the next date.

9. List in the next cause list.

10. It is made clear that restoration of this petition will not mean that the lower Courts are barred in any manner from proceeding in the matter in accordance with law.