

(2005) 12 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 74353 of 2005

Awadhesh Kumar Tewari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 21, Order 9 Rule 13

Citation : (2006) 74 AWC 2719 : (2006) 3 AWC 2719 : (2006) 100 RD 455 :
(2006) 1 RD 455

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : S.K. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Poonam Srivastava, J.—The writ petition is beyond time by 190 days. The explanation for delay is given in paragraph No. 16 of the writ petition.

2. Cause shown is sufficient. Laches in filing the writ petition is condoned.

3. Heard Sri S.K. Pandey, learned Counsel appearing for the petitioner.

4. The order dated 22.1.2005, passed by the Additional District Judge, Court No. 5, Farrukhabad, rejecting the restoration application filed by the petitioner is challenged. This application was filed for recalling an ex parte order dated 16.8.2004. The respondent No. 5 instituted an original suit in the Court of Civil Judge (Junior Division) Farrukhabad, claiming the relief of declaration and stating that he had continuously worked on the post of peon w.e.f. 1.11.1977 in Mohan Lal Shukla Adarsh Vidyalay, Farrukhabad and also withdrawn his salary up till 31.5.1983. The Original Suit No. 344 of 1999 was dismissed on 21.9.2001. The said judgment was challenged by the respondent No. 5 before the District Judge, Farrukhabad by filing an appeal, which was numbered as Civil Appeal No. 48 of 2001, Mahesh Chandra Mishra v. District inspector of School, Farrukhabad and Ors. The appeal was allowed ex parte on 16.8.2004. An application under Order

IX, Rule 13, C.P.C. was moved on the ground that notice was served to the previous Head Master but not the Head Master, who was working when the appeal was allowed. Submission on behalf of the petitioner is that he had no knowledge about pendency of the appeal and Head Master Hari Nandan Gangwar failed to inform about pendency of the appeal. Counsel for the petitioner has emphatically argued that admittedly, summons were issued in the name of previous Head Master Mohan Lal Shukla and, therefore, ex parte decree is liable to be set aside. It is noteworthy that the petitioner has also failed to appear in the Court during continuation of the suit. The Court while, rejecting the application recorded a finding that the order in appeal can only be set aside and the appeal be reheard on an application of the respondent against whom ex parte decree is made under Order XLI, Rule 21. C.P.C., if the Court is satisfied that notice was not duly served or he was prevented by sufficient cause from appearing in the Court when the appeal was being heard. In the instant case, admitted position is that notice was served personally on previous Head Master Mohan Lal Shukla and no pairvi was done on his behalf. Subsequently, Hari Nandan Gangwar had taken over charge as Head Master. The Court cannot be expected to serve notice individually to all such persons, who joined the post. In the circumstances, the application was rejected by means of the impugned order.

5. I have heard learned Counsel appearing for the petitioner at length and also gone through the order impugned in the instant writ petition. I do not find any illegality in the same. The writ petition lacks merit and is, accordingly, dismissed.