
(2006) 01 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2964 of 2001 and Recall Application No. 96799 of 2004

Balbir Singh

APPELLANT

Vs

Union Bank of India and Others

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Citation : (2006) 2 UPLBEC 1324

Hon'ble Judges : Umeshwar Pandey, J; Sushil Harkauli, J

Bench : Division Bench

Advocate : V.K. Singh, G.K. Singh, Arvind Kumar Shukla and Reeta Shukla, for the Appellant; V.R. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Sushil Harkauli and Umeshwar Pandey, JJ.—We have heard learned Counsel for the applicant, who has applied for recall of the order dated 18.5.2005 passed by a Division Bench of this Court in which one of us (Hon. Lmcshwar Pandey. J.) was a Member. The other Hon"ble Judge, Lion. S.P. Srivasuiva, J. has since retired. The order was passed about 1 ? years ago. It is difficult to remember what had transpired in Court on that date. Therefore we have to proceed on the basis of the record. The order dated 18.5.2005 specifically states in its opening line that the learned Counsel for the petitioner has been heard. Thereafter the order proceeds to dismiss the writ petition on merits. The petitioner has sought recall of that order on the averment that the counsel for the petitioner was not heard. In support of his averment the petitioner has tiled affidavits of both the learned Counsel who had filed appearances on behalf of the petitioner upto the date of judgment, i.e. 18.5.2005.

2. On the strength of the affidavit of two lawyers, who say that they have not been heard, the petitioner wants us to hold that the two Hon"ble Judges of this Court have, for some unexplained reason, written in the judgment that "The counsel for the petitioner has been heard."

3. Learned counsel for the petitioner relies upon a Supreme Court decision in the case of Rais Ahmad Vs. State of U.P. and Others, The case has no application whatsoever to the facts of the present case. Before the Supreme Court the case was that an "illness slip" had been sent by the Counsel, it was not brought to the notice of the Court and the Court proceeded to decide the matter.

4. In the present case the question is whether on the basis of an affidavit of a counsel filed after dismissal of the writ petition saying that the counsel had not been heard; the order of the Division Bench saying that the counsel has been heard, should be disbelieved

5. It has not been explained as to what possible reason the Court could have had to state in its judgment that it had heard learned Counsel for the petitioner. The normal practice in this Court and probably in every Court in civil cases is that if no one appears for the petitioner the case is dismissed for default. Normally no Court wastes its time in absence of counsel in adjudicating the matter on merits. Therefore, we refuse to believe the affidavits filed in this case by the two counsel, who appeared for the petitioner.

6. It is also well settled that hard cases do not justify making of bad law. If we grant the prayer of the petitioner it would mean that at any time, after dismissal of a case after hearing the petitioner, if the counsel for the petitioner files his affidavit that he has not been heard, the Court must reopen the case and thus be placed completely at the mercy of the counsel. The potential of misuse of such a view would be greater where after delivering judgment the Judge has retired. We decline to lay down such law.

7. Accordingly, the recall application is rejected.