
(2000) 02 AHC CK 0156

In the Allahabad High Court

Case No : Civil Miscellaneous Application No's. 62974 and 62975 of 1999 In
C.M.W.P. No. 18366 of 1988

Balram Tiwari and others

APPELLANT

Vs

Regional Transport Authority, Varanasi and another

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Citation : (2000) 2 AWC 1471 : (2001) 1 CivCC 415 : (2001) 1 RCR(Civil) 124

Hon'ble Judges : Ratnakar Dash, J;D. S. Sinha, J

Bench : Division Bench

Advocate : K. K. Singh, C. P. Ghildyal and R. A. Sharma, for the Appellant; S. C., for the Respondent

Final Decision : Dismissed

Judgement

D. S. Sinha and Ratnakar Dash, JJ.—Instant petition was filed through Sri C. P. Ghildyal, the learned counsel of the petitioners, more than eleven years ago, to be precise, on 29.9.1988, and was admitted on the same day. The order-sheet indicates that after the lapse of an interminable period of more than eight years, it came up before the Court for hearing on 17th October. 1996. On that date, the learned counsel, then appearing for the petitioners, sent illness-slip praying for adjournment of the case. Consequently, the hearing of the case was adjourned. Next time it came up before the Court on 14th November. 1996. Again the hearing of the case was adjourned for two weeks at the behest of the learned counsel of the petitioners. Thereafter the petition came up for hearing on 4th December. 1996. Unfortunately, the hearing of the case had to be adjourned again on the illness-slip of the counsel of the petitioners praying for adjournment of the hearing.

2. Eventually, on 3.1.1997 the learned counsel of the petitioners appeared before the Court and made a statement to the effect that on account of events subsequent to filing of the writ petition, the petition had become infructuous. Thus, the petition was dismissed as infructuous.

3. After lapse of more than two and a half years, the petitioners woke up to move Civil Misc. Application No. 62975 of 1999 through a new counsel, namely, Sri K. K. Singh, praying that the order of the Court dated 3.1.1997 be recalled and the petition be restored to its original number for decision on merit. The application being, obviously, belated is accompanied by delay condonation application No. 62974 of 1999 praying for condonation of delay in moving the restoration application. A common affidavit sworn by Jagat Singh, the petitioner No. 2, has been filed in support of the restoration as well as delay condonation application.

4. The restoration application and the delay condonation application put up before the Court for consideration, and once again the Court is confronted with an illness-slip praying for adjournment of the case sent by Sri K. K. Singh, the learned counsel now appearing for the petitioners. In the cause-list of the Court the name of Sri C. P. Ghildyal is also shown as the counsel appearing for the petitioners, but Sri Ghildyal has not turned up despite the fact that the case has been taken up on revision of the cause-list.

5. In view of the fact that the case is of the year 1988 and that hearing of the case had been adjourned from time to time either on the Illness-slip of the counsel of the petitioners or his request made otherwise ; that it was dismissed on 3.1.1997 on the statement of the learned counsel then appearing for the petitioners to the effect that the petition had become infructuous, and that the application for recall of the said order dated 3.1.1997 has been moved after the lapse of two and a half years, i.e., on 13th September, 1999 through a new counsel and that one more counsel, namely. Sri C. P. Ghildyal appears for the petitioners, and there is nothing on record to show that his instructions were ever terminated by the petitioners, the Court declines to honour the illness-slip sent by Sri K. K. Singh, through whom the petitioners have now approached the Court for recalling its order dated 3.1.1997 and for the condonation of the delay in moving the said application, and turns down the prayer of Sri Singh to pass over the case on the strength of his illness-slip. It is pertinent to state that in the illness-slip, Sri K, K. Singh, has notified to the Court that he is actually ill without disclosing the nature of the illness which may have been sufficient to prevent him from attending the Court. Court feels that privilege of having case adjourned on the illness-slip is being abused.

6. On the facts and circumstances disclosed hereinbefore, the Court proceeds to consider the application praying for condonation of delay in moving the restoration application after lapse of a period of more than two and a half years. The Court has carefully scanned the averments made in the delay condonation application as well as in the affidavit filed in support thereof. Despite its anxious scrutiny the Court has not been able to find out any explanation much less sufficient explanation for the inordinate delay in moving the restoration application which is sine qua non for condonation of delay. In the absence of any cause affording ground for delay in moving the restoration application, the prayer

for condonation of delay in moving the restoration application is rejected. The delay condonation application having been rejected, the application praying for recall of the order of the Court dated 3.1.1997 and restoration of the case to its original number is rejected as belated.

7. Before parting with the case, the Court places on record its disapproval of the practice of moving restoration application through a new counsel without terminating the Instructions of the erstwhile counsel in accordance with law. The Court is afraid, besides being abuse of the process of the Court such a conduct may perhaps amount to professional misconduct and that too when a new counsel appears in a case without obtaining the consent of the counsel already appearing in the case, as appears to be the case in the instant matter. The Court expects that in future, it will not be confronted with the situation with which it is confronted in this case.