

(1950) 09 MP CK 0001

In the Madhya Pradesh High Court

Case No : Civil Revision No. 80 of 2005

Biharilal Gyanchand

APPELLANT

Vs

Shantilal Raghuwardayal and another

RESPONDENT

Date of Decision : 09-09-1950

Acts Referred:

Citation : (1950) 09 MP CK 0001

Hon'ble Judges : Shinde, J

Bench : Single Bench

Advocate : Shiv Dayal, for the Appellant; Pande, for the Respondent

Final Decision : Dismissed

Judgement

Shinde, J.—This is defendant's petition for revision. The Additional District Sub-Judge, Bhind, allowed the application of the plaintiff to set aside the order of dismissal for default. Against that order the petitioner filed this revision.

2. The only ground pressed before me on behalf of the petitioner is that the cause of absence shown by the plaintiff is not sufficient. It is alleged by the plaintiff that on the date of bearing, that is, 13-2-1948 his Vakil was in detention and he himself was delayed as he was called to supply provisions to the new under-trial prisoners, who arrived at about 12 O.C. After giving them all the provisions when he came to the Court at about quarter to two his suit was dismissed for default. The trial Court has held this allegation to be true. The learned counsel for the petitioner does not challenge the veracity of the facts alleged by the plaintiff. His contention is that if he had taken proper care, the case could not have been dismissed for default. This argument has very little force. It is clear from the facts proved that the plaintiff's Vakil was in detention. The plaintiff himself wanted to be present in Court personally. On account of the unexpected arrival of the prisoners he had to go to the lock-up to supply the provisions. That delayed him and hence he could not be present when the case was called up for hearing. It cannot be said, therefore, that the plaintiff was

grossly negligent. On this subject the remarks of Schwabe C.J. can be quoted with benefit. The learned Chief Judge made the remarks as follows:

It should never be the intention of the Court that a man should be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part or something which cannot be put tight so far as the other side is concerned by making the man to blame, pay for it.

(Vide R.A. Arunachala Aiyar Vs. C. Subbaramiah,

3. The view had been taken by the Madras High Court in Raman Chettyar v. Arunachalam Chettyar, AIR 1986 Madras 335 : (164 I.C. 236). Bombay High Court also has followed this view in P.D. Shamdasani Vs. The Central Bank of India Ltd., Examining the present case in the light of the decisions cited above. I find that the decision of the lower Court is perfectly correct. The evidence on record does not show that the plaintiff was guilty of misconduct or gross negligence. It is a fact that his Vakil was in detention. It has also been proved to be true that he was called to supply provisions to the under-trial prisoner at 12 O.C. It is also proved to be true that about quarter to two the plaintiff did come to the Court. Under these circumstances it cannot be said that the plaintiff was guilty of misconduct or gross negligence. The exercise of discretion by the lower Court cannot, therefore, be said to be improper. There is, therefore, no reason to interfere with the order passed by the lower Court.

4. The revision is dismissed with costs.