

(2012) 01 AHC CK 0488
In the Allahabad High Court
Case No : Writ - C No. - 25321 of 1997

Brig J.K. Bhalla and Another

APPELLANT

Vs

Special Judge Addl. District Judge and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

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

Citation : (2012) 01 AHC CK 0488

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Arun Tandon, J.—Heard learned counsel for the petitioner. Nobody is present on behalf of the respondents.

2. Original Suit No. 651 of 1990 was decided ex parte on 30.08.1993. The petitioners before this Court, who were the defendants in the suit, made an application for recall of the ex parte decree under Order IX Rule 13. Various facts and pleas were raised by the petitioners including the plea that the suit was originally being heard before Munsif, Agra, however on 29th November, 1990 the proceedings were transferred to the Court of Vth Additional Munsif, Agra. According to the General Rules Civil 89-A, on transfer of suit proceedings to another Court it is but necessary that a fresh notice should be sent to the parties. It was their categorical case that after the transfer of the proceedings to the Court of Vth Additional Munsif, Agra, no notice of the proceedings was either issued or served upon the petitioners.

3. The Vth Additional Munsif, Agra, after considering the various aspects raised on behalf of the petitioners, agreed with the contention noticed above and recorded a categorical finding that after the transfer of the proceedings to the Court of Vth Additional Munsif, Agra it was necessary, in view of Rule 89-A of the General Rules Civil, that a fresh notice should have been sent to the defendants,

even if they had not been contesting the proceedings earlier. For the purpose reliance has been placed upon the judgment of the High Court reported in Long Life Carpet Industries, Gaharpur and Others Vs. Smt. Kesar Jahan, .

4. Accordingly, the Vth Additional Munsif, Agra proceeded to grant the application and to restore the suit vide order dated 21.08.1995 on payment of cost of Rs. 400/-. This cost was paid by the defendants to the plaintiff. However, the plaintiff filed a revision, being Revision No. 272 of 1996. The Additional District Judge, Agra has allowed the revision under order impugned dated 17th May, 1997. The District Judge in the order impugned has set aside the finding recorded by the trial court in the matter of non-compliance of Rule 89-A of General Rules Civil only by observing that in the order-sheet dated 27.05.1993 at the time of final hearing it has been recorded that the parties are present and therefore it has been held that it is to be presumed that the petitioners were present on the date final hearing took place.

5. Such presumption drawn by the District Judge is not borne out from the record nor it was the case pleaded by the plaintiff while contesting the application under Order IX Rule 13. It has not been found by the District Judge that the order-sheet dated 27.05.1993 bears the signature of the present petitioners and therefore merely because the Munsif had recorded that the parties were present, it will not logically follow that the petitioners were present. There is no material to support the presumption. The order impugned passed by the District Judge cannot be legally sustained.

6. The order dated 17th May, 1997 is hereby quashed. The suit stands restored to its original number. The trial court is directed to proceed with the suit strictly in accordance with law without granting any unnecessary adjournment to either of the parties and if possible to conclude the proceedings preferably within 9 months from the date a certified copy of this order is filed before it. Writ petition is allowed.