
(2013) 02 AHC CK 0152

In the Allahabad High Court

Case No : Miscellaneous Single No. 2604 of 2001

Dinesh Chandra Awasthi

APPELLANT

Vs

IIIrd Additional District Judge, Sitapur & Another

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

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

Citation : (2013) 02 AHC CK 0152

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.

Heard learned counsel for parties and perused the record.

Facts in brief of the present case are that initially petitioner/plaintiff filed a suit (Suit No. 209 of 1991) before Civil Judge (Sr. Div.), Sitapur, decided exparte by means of the judgment and decree dated 21.08.1996. On 14.04.1997, the defendant/respondent No. 2 moved an application under order 9 Rule 13 CPC read with Section 5 of the Limitation Act for recall of the said exparte decree, rejected by order dated 29.07.2000, thereafter, the defendant/respondent filed an appeal under Order 43 Rule 1 CPC, allowed by means of the order dated 14.03.2001, hence present writ petition has been filed challenging the order dated 14.03.2001.

After hearing the learned counsel for parties and going through the record as well as taking into consideration the settled proposition of law that when substantial justice and technical justice are pitted against each other, the cause of substantial justice deserves to be preferred, that is to say, the matter should be decided on merit not on technical grounds and also keeping in view the law as laid down by Hon'ble Supreme Court in the case of Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors. JT 2012 (10) SC 476 in paragraph no.3 held as under:

"The principles of natural justice embody the right to every person to represent his interest to the court of justice. Pronouncing a judgment which adversely affects the interest of the party to the proceedings who was not given a chance to represent his/its case is unacceptable under the principles of natural justice."

In view of the abovesaid facts, I do not find any illegality or infirmity in the impugned order dated 14.03.2001 passed by O.P. No. 1/Third Additional, District Judge, Sitapur in Misc. Civil Appeal No. 36 of 2000 (Sooraj Prasad Awasthi Vs. Dinesh Chandra Awasthi), thus, writ petition is dismissed and Civil Judge (Sr. Div.), Sitapur is directed to decide the suit in question expeditiously.