
(1976) 02 AHC CK 0054
In the Allahabad High Court
Case No : Second Appeal No. 8 of 1974

Dwarika Prasad	Vs	APPELLANT
Smt. Savitri Devi and Another		RESPONDENT

Date of Decision : 23-02-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19, Order 9 Rule 4, 151

Citation : (1980) AWC 478

Hon'ble Judges : R.M. Sahai, J;K.B. Asthana, J

Bench : Division Bench

Advocate : Chandra Bhushan Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—This second appeal was listed on 29th July 1975 under Chapter XII Rule 4. The case was called but as no application signed by the party or his counsel along with requisite court fee stamps was presented the appeal was dismissed. An application was moved on 18th August 1975 u/s 151 CPC with a prayer to recall the order. The prayer was opposed by the other side and reliance was placed on a decision reported in Raja Ram Dayalu v. Smt. Vimta Rani 1975 ALJ 309. Brother N.D. Ojha did not agree with the ratio of the decision and referred the following question for consideration by a Division Bench:

Whether the court after dismissing an appeal or application under Chapter XII Rule 4 of the Rules of Court has jurisdiction to recall that order in the event of a specific cause being shown for no steps having been taken on the date when the case was listed under Chapter XII Rule 4 of the Rules of the Court?

2. Chapter XII of the Rules of Court deals with service of notice and summoning of record. Rule 4 lays down the consequences of non-payment of process fee. The rule pertains in the realm of procedure the basic object of which is to aid in adjudication of rights Rules of procedure are handmaids of justice. They are meant to advance and facilitate its attainment rather than thwart it. Courts are

not to act upon principle that every procedure is to be taken as prohibited unless it is expressly provided, but ought to act on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. The rule exhausts itself once an order is passed. It does not ordain nor is there any other rule which takes away the right of a litigant to invoke inherent powers of the court. Order IX Rule 4 and Order XLI Rule 19 of the CPC are instances where there is express provision for moving the court for recalling of order in more or less similar circumstances on sufficient grounds. The basic concept of sufficient cause is bona fide and good faith. Taking clue from these provisions there can be no doubt that if sufficient cause is established courts cannot be deemed powerless to recall an order which may perpetrate injustice. To recall an order in such circumstances is not doing indirectly what is prohibited directly but proceeding further from a stage where the operation of rule comes to an end. It has been held by their Lordships of the Supreme Court in a decision Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, :

(16) Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

(17) Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

3. We have also been referred to a decision of a Division Bench in Civil Revision No. 1359 of 1974 Sri Hart Prakash v. Ram Krishna Dayal Ram. Due to scarcity of process fee stamps the case was listed under Chapter XII Rule 4 and the Court while accepting the process fee observed:

We think this Court has always an inherent power to pass orders in the interest of justice as it may deem fit in the exigencies of the situation. The Rules of the Court are not to be applied in order to thwart the ends of justice.

4. The situation although is not identical yet we agree with the principles of law enunciated by the Division Bench. It has also been brought to our notice that this Court has been recalling its orders under chapter XII Rule 4 if sufficient cause was made out.

5. In view of what we have stated above our answer to the question referred is that the court has jurisdiction to recall the order in the event of a specific cause being shown for steps not having been taken on the date when the case was listed under Chapter XII Rule 4 of the Rules of the Court. The case shall now be listed before the learned single Judge.