
(1985) 05 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil Second Appeal No. 300 of 1976

Kamal Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-05-1985

Acts Referred:

Rajasthan High Court of Judicature Rules, 1952 — Rule 72

Citation : AIR 1986 Raj 28 : (1985) RLW 398 : (1985) 2 WLN 58

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : G.S. Bapna and Ranveer Singh, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—No one appears for the appellant. Mr. Bapna appears for the respondent Union of India.

2. This is a case of a petty low paid employee. Unfortunately since neither the appellant, nor the counsel for the appellant is present, this Court cannot go into merits of the case on account of Order 41, Rule 17, C.P.C., which reads as under : --

"17. Dismissal of appeal for appellant's default.-- (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Explanation. -- Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.

Hearing appeal ex parte.-- (2) Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte."

If there was any doubt, the Explanation introduced by Amendment Act of 1976 by Section has made it clear that the Court cannot dismiss the appeal on merits.

This certainly leads to the logical inference that hearing on merits is not possible, because once the appeal is beard and considered on merits, the Court may be convinced that there is no merit in the case and it deserves to be dismissed.

3. While hearing the Civil first and second Misc. appeals during last about one year, both at Jodhpur and Jaipur, I have observed that on the establishment of the Bench at Jaipur and consequent transfer of cases with transfer of the establishment of the Advocates from Jodhpur to Jaipur, several cases which are listed at Jodhpur and Jaipur remain unattended. Either the parties are not aware that the counsel who were earlier engaged have left the place without making arrangement of the other counsel at the place where the case has been transferred, or in spite of making arrangements there is lack of interest which explains non-appearance. In either case it is the litigant who, mostly is unaware of the listing of the case, and who suffers and after waiting for a chance of hearing for more than a decade in High Court the case is dismissed in default.

4. In view of the pendency of the huge arrears, which have crossed the number of 40,000 by now in this High Court as a whole and in view of the fact that at the time of shifting, notices were given to the counsel appearing in those cases on the transfer of the cases, it is not possible to adopt the method of issue of fresh notices now to the litigants. The second appeal instituted in 1968 is yet pending and now we are in 1985. If fresh notices are issued now, then it would mean another one decade delay and serious complications and procedural wrangles.

5. At the same time in this age of Social Justice when the Courts are showing increasing concern for the litigants and we are anxious that substantial justice and social justice is done speedily, it should also be ensured that as far as possible there is wide publicity of the cause list, so that the Advocates at Jaipur as well as at Jodhpur can know of their old cases and engage and send information to the successor Advocates to inform the client in time.

6. With the above object, it would be desirable that a copy of the monthly cause list and the weekly cause list is published by the Registry at the corresponding places also. To make it explicit it is directed that the monthly and weekly cause lists of Jaipur Bench should be placed on the notice board of the High Court at Jodhpur and similarly the monthly and weekly cause lists of the cases listed at the main seat of Jodhpur should be placed and pasted on the notice board of the High Court at Jaipur Bench also.

7. Apart from the above two directions which should be complied by the Registry forthwith, this matter should also be placed before the Hon"ble Chief Justice so that if deem proper, directions can be issued for the sending and placing of the monthly and weekly cause lists at the erstwhile divisional places like Ajmer, Udaipur, Bikaner, and Kota on the notice boards of the Courts of District Judges concerned.

8. It is also desired that the Bar Council of Rajasthan should take necessary steps in collaboration with the Bar Associations of various district places to obtain

and publish the monthly and weekly cause lists and if possible, daily cause lists at the various district headquarters also as this would be a real aid to the litigants and the lawyers and be a landmark in the functioning of the Bar Council for providing efficient functioning of the members of the Bar. With the above object, a copy of this order should be sent to the Bar Council of Rajasthan and the various Bar Associations also. It is really unfortunate that in spite of all advancement of Science and Technology and means of communication and electronics, we are not even in a position to have a wide publicity of the fact that a particular case has been listed in the Court so that the litigant can immediately rush to the Court and activate his counsel.

9. It is, however, made clear that the above procedure is being adopted to facilitate the information about listing of the case to the lawyers and the litigants only and any omission in the implementation or execution of this order would not give any right to a litigant to plead sufficient cause for non-appearance as that would be opening floodgates of delay delaying the cases and would create lethargy also.

10. So far as the present appeal is concerned, howsoever unpleasant it may be, there is no option left to this Court but to dismiss the same in default.

11. Consequently the appeal is dismissed in default.