
(2018) 02 DEL CK 0109

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 479 Of 2017

Kuber Nath Srivastava

APPELLANT

Vs

Preet Pal Singh

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151

Citation : (2018) 02 DEL CK 0109

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : N.K. Kantawala, Satyender, Jagjit Singh

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. There can be no denial of the fact that the petitioner (and his counsel) have been guilty of gross neglect. But, the question is should he suffer being

non-suited for reasons which are shown to be attributable more to his counsel.

2. The petitioner had instituted the suit (suit no.149/2006) on 30.03.2005 against the respondent seeking recovery of Rs.1,05,080/-. The suit was

dismissed by the civil judge by judgment dated 04.11.2011. He filed regular civil appeal (RCA 26/2013) with some delay. The said appeal was thrown

out by the first appellate court as time barred by order dated 08.01.2014. The petitioner approached this court by invoking the revisional jurisdiction

(CRP 41/2014) which was allowed by a consent order dated 09.12.2014 setting aside the order dismissing the appeal as barred by delay, restoring it to

be heard and disposed of on merits. By the said order, this Court fixed the date (06.01.2015) for the parties to appear before the District & Sessions

Judge (West District), it being added that the District & Sessions Judge would mark the first appeal for disposal to a competent court in accordance

with law, the rider being that the petitioner was to pay an amount of Rs.15,000/- as costs within a period of four weeks.

3. The appeal was taken up by the District & Sessions Judge (West) on 06.01.2015. She opted, in exercise of the discretion vested in her, to keep the matter on her board instead of being allocated to some other competent court as per the observations in the order of this Court. There was no

appearance on the part of the petitioner till 12.24 p.m. The District & Sessions Judge was unable to wait further as she recorded that she would be on

leave of absence in the post-lunch session. She noted the submission of the counsel for the defendant that costs had not been paid. Nonetheless she

directed the matter to be renotified on 09.01.2015.

4. On 09.01.2015, there was no appearance on behalf of the petitioner and thus, the appeal was again dismissed and file was consigned to the record room.

5. The explanation of the petitioner is that the counsel representing him had noted wrong date (19.01.2015), copy of his diary (Annexure P-6) having been submitted in support. On this ground, he moved an application under Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking restoration.

The Additional District Judge by the impugned order dated 12.01.2017 dismissed the said application refusing to entertain the appeal any further.

6. In resisting the petition at hand, the counsel for the respondent first referred to the dismissal as withdrawn by order dated 11.05.2016 of Civil

Revision No.41/2014 of the petitioner. The said revision petition statedly was filed by the petitioner seeking enlargement of time for payment of costs.

The said order would have no bearing since the order under challenge is the one passed on the application for restoration of the appeal, which was dismissed in default.

7. The counsel for the respondent then submitted that though the costs were paid to the respondent on 16.12.2015, by way of an application later moved on 12.02.2016, the said costs were sought to be returned to the petitioner. If so, it only means that the respondent had forfeited the costs which had been imposed by this court by order dated 09.12.2014, particularly in view of the fact that the proceedings recorded on 16.12.2015 clearly reflect

that the respondent had received the said amount of costs â??without any reservationâ??.

8. In the above facts and circumstances, the neglect is undoubtedly of the petitioner but more on account of the conduct of his counsel. It would not be fair to throw his appeal out on technical grounds.

9. Therefore, the petition is allowed. The first appeal dismissed in default by the District & Sessions Judge (West) by order dated 09.01.2015 is

restored on the file of District & Sessions Judge (West) but subject to the petitioner depositing with District Legal Services Authority costs in the sum

of Rs.25,000/- within four weeks.

10. The parties are directed to appear before the District & Sessions Judge (West) for further proceedings in accordance with law in the said appeal

on 12.03.2018. It shall be the responsibility of both sides to remain present in person or through counsel well in time on the first call of the matter. The

petitioner as the appellant will be obliged to place on record of the first appellate court, copy of the receipt confirming the deposit of the costs. In case

of default, the appeal would stand dismissed for non-prosecution.

11. As a natural consequence to the above, the impugned order dated 12.01.2017 is also vacated.

12. The petition is disposed of in above terms.