

(1994) 01 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Special Appeal No. 48 of 1993

Kumari Renu Chauhan

APPELLANT

Vs

The Government College and Others

RESPONDENT

Date of Decision : 20-01-1994

Acts Referred:

Citation : (1994) 1 RLW 45 : (1994) 1 WLC 411 : (1994) 1 WLN 150

Hon'ble Judges : R.S. Kejriwal, J; Mohini Kapoor, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This special appeal has been filed against the order dated 8th January, 1993 by which the restoration application of the appellant was dismissed on the ground; that sufficient cause for absence in the date of dismissed of the writ petition was not made out.

2. The facts in brief are that a writ petition was filed by the present appellant for seeking admission to LL.B. 1st year course in Government College, Ajmer. On this writ petition an order was passed on 21st November, 1989 that provisional admission be given to her in LL.B. 1st year provided there remains vacancy available for admission after giving admission to the aspirants candidates who possess 45% marks and who have applied for admission. Thereafter, the writ petition remained pending and was adjourned from time to time on the request of the counsel for the parties. On 6th May, 1992 no one was present for the counsel for the petitioner and Shri D.K. Soral, counsel for the respondent No. 3 was present and the writ petition was dismissed in default and it was also made clear that the interim order dated 21st November, 1989 shall stand vacated by the dismissal of the writ petition.

3. An application for restoration of the writ petition was moved on behalf of the petitioner with the submission that her counsel Shri B.L. Samdariya was busy at Ajmer on 4,5 and 6th may 1992 in connection with the marriage of his niece

therefore, in the morning on 6th May, 1992 he informed Shri R.N. Mathur, Advocate on telephone to appear before the Court and to seek adjournment on the ground of the marriage of his niece. The case was listed at Sl. No. 47 in the Court. However, when the Court called the case Shri R.N. Mathru, Advocate did not appear and the reason given is that he remained busy in some other court when the case was called out and, therefore, he could not appear and seek adjournment as instructed by Shri Samdariya. Both Shri B.L. Samdariya and Shri R.N. Mathur have filed affidavits.

4. A reply has been filed on behalf of the respondent No. 3 stating that the reasons mentioned in the application do not constitute a sufficient cause for restoration. On legal aspect also it was mentioned that the petitioner had accrued less than 45% marks at graduation level and was not entitled for admission in LL.B. in accordance of Ordinance 252 of the University of Ajmer. An opportunity was given to Shri Soral to cross-examine Shri Samdariya and Shri R.N. Mathur on the affidavits filed by them but he expressed his desire not to cross-examine these deponents.

5. The learned Single Judge while dealing with the application for restoration accepted that Shri Samdariya was busy at Ajmer in connection with the marriage of his niece but held that Smt. Maya Bansal, advocate who had been appearing in the case did not appear on the date in question and no reason had been given as to why she did not appear on behalf of the petitioner. As for the affidavit of Shri R.N. Mathur, Advocate it was observed that the affidavit does not mention the Court in which he was busy when the case was called. Even the time was not mentioned when the case was called and dismissed in default. Shri R.N. Mathur never came to the Court to inform that he had been instructed by Shri Samdariya Advocate to seek adjournment.

6. Besides this, it has been observed that this Court is not bound to exercise the extra ordinary jurisdiction conferred on this Court and the reasons given are that any party cannot take advantage of some misreport in the newspapers and cannot mislead and got notices issued to show cause on a policy matter for any relief in his favour. The application was dismissed for not coming to the Court with clean hands and the restoration application was also dismissed.

7. We have heard the learned Counsel for the parties. At the time of dealing with an application for restoration of a petition dismissed on default on the ground of absence of the counsel or the parties, this Court has to look into the question whether sufficient ground for non-appearance by the party or his counsel has been made out or not. At this stage, it is not open to the Court to go into the merits of the case. It may be stated that after accepting the restoration application, the Court can proceed to decide the main writ petition or case whatsoever it is but our purposes of deciding the restoration application, the only question to be seen is whether the party or his counsel was prevented by sufficient cause from appearing in the case when it was called. In the present case, the explanation given by Shri B.L. Samdariya for not being able to appear

on 6th May, 1992 has been accepted. When Shri B.L. Samdariya had made arrangements with Shri R.N. Mathur to appear in the Court and seek adjournment then the question of appearing of Mrs. Maya Bansal in the Court does not arise for consideration. It is for Mr. B.L. Samdariya to see whether he sends Mrs. Bansal in the case or Mr. Mathur in the case and being satisfied with the arrangements he depended on Mr. Mathur. However, Mr. Mathur did not appear in the case which led to dismissal of the writ petition. He has given the reason that he could not appear as he was busy in another Court and thus, it can be said that he has been negligent for not conveying the instructions of Shri Samdariya to the Court but then for his negligence the party cannot be punished. The negligence of Mr. Mathur cannot come in the way of the appellant because her counsel was Shri Samdariya and for his absence sufficient cause has been shown in the application as well as in the affidavit.

8. It may be stated that the reference, to the manner in which the notices were issued by the Court and the nature of relief granted to the petitioner is irrelevant at the stage of deciding the respiration application. If a party is guilty or misrepresenting or misleading the Court then the main writ petition can be dismissed but it does not mean that when sufficient cause is made out for absence on a particular date when the writ petition was dismissed it should not be accepted for purposes of restoration of the writ petition. We are of the opinion that this appeal should be allowed as sufficient ground for the absence of the counsel of the appellant on 6th May 1992 has been made out.

9. The learned Counsel for the respondent has contended that the interim order granted to the petitioner at the time of issuing notice should be vacated because the petitioner has already appeared in the third year examination even though she was not eligible for getting admission in LL.B. We are surprised at the raising of this argument at the stage when the question before us is whether the writ petition deserves to be restored or not. The counsel for the respondent never objected to the adjournments sought by the petitioner's counsel in the writ petition and now he wants to raise a pleas that the adjournments were taken in a, malafide manner. We can only say that this appeal is against the order refusing the prayer of restoration of the writ petition and it is for the Single Judge to decide whether or not the stay order should be continued, or vacated or modified but at this stage we cannot pass any order interfering with the same.

10. This appeal is allowed. The impugned order dated 8th January, 1993 dismissing the restoration application and the order dated 6th May, 1992 dismissing the writ petition in default is set aside and the writ petition is restored to its original numbers. The writ petition be listed for admission on 24th January, 1994.