

(1997) 12 AHC CK 0059

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 17800 of 1994

Lalji Singh Yadav

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Citation : (1997) 12 AHC CK 0059

Hon'ble Judges : D.S.Sinha, J

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Shri A.S. Diwekar, learned Counsel appearing for the petitioner and Shri Vivek Ratan, learned Counsel representing the respondents No. 2,3,4 and 5.

2. This writ petition was filed by the petitioner through Shri A.S. Diwekar and Shri B.R. Maurya, as is evident from the Vakalatnama accompanying the writ petition, in September, 1981 and was admitted on 4th November, 1981. Eventually, it was listed for hearing on 5th September, 1994 and was dismissed for want of prosecution. The order dated 5th September, 1994 dismissing the petition for want of prosecution is sought to be recalled by means of the restoration application No. 17800 of 1994, which is accompanied by an affidavit sworn by Shri R.K. Patel, claiming himself to be the clerk of Shri Ajay Yadav, Advocate.

3. In the affidavit filed in support of the restoration application it is stated that two Counsels, namely, Shri I.N. Singh and Shri Ajay Yadav had appeared for the petitioner and Shri Ajay Yadav had sent illness slip praying for adjournment of the hearing of the case on 5th September, 1994. Further statement in the affidavit is that the case was taken up on. revision of the cause list and was dismissed for want of prosecution; and that as soon as Shri I.N. Singh came to know of the dismissal he rushed to the court to make request for recalling the order dated 5th September, 1994, but by that time court had retired.

4. Today, Shri A.S. Diwekar, learned Counsel of the petitioner, through whom the writ petition was filed, appears. The ordersheet indicates that on previous occasion also he had appeared for the petitioner. The Court as well as Shri Diwekar scanned the entire record to find out whether Shri I.N. Singh and Shri Ajay Yadav appeared as Counsels for the petitioner, but in vain. Neither is there on record any Vakalatnama of Shri I.N. Singh and Shri Ajay Yadav nor does the ordersheet indicate that they appeared for the

petitioner at any point of time. Even the restoration application is not signed by either Shri I.N. Singh or Shri Ajay Yadav. Indeed, it is signed by an other advocate, namely, Shri Anil Kumar Yadav. The affidavit accompanying the restoration application focuses its attention in explaining the absence of two Counsel Shri I.N. Singh and Shri Ajay Yadav who appear to be strangers to the case as noticed above. There is no explanation why the two Counsels, namely, Shri A.S. Diwekar and Shri B.R. Maurya, through whom the writ petition was filed and whose Vakalatnama is on record, did not appear.

5. The respondents No. 2 to 4 are contesting the prayer of the petitioner for restoration. A counteraffidavit on their behalf has been filed in the matter of restoration. In the counteraffidavit it is pointed out that, admittedly, there was no illness slip of Shri I.N. Singh. It is further pointed out that in the affidavit filed in support of the restoration application there is no explanation for nonappearance of Shri I.N. Singh, Advocate when the case was taken up on revision of the cause list on 5th September, 1994. The counteraffidavit filed on behalf of the respondents No. 2, 3, 4 and 5 remains uncontroverted inasmuch as no rejoinder affidavit has been filed by or on behalf of the petitioner.

6. The cause for default in appearance and prosecution of the case by each of the Counsels appearing in the case has to be explained sufficiently and to the satisfaction of the Court as the Counsels appearing in a case are jointly and severally responsible for the due prosecution of the case.

7. On the facts and circumstances noticed above, the Court is of the opinion that no ground, much less sufficient, which is sine qua non for grant of the prayer of restoration of the writ petition, has been made out. The application No. 17800 of 1994 praying for recalling the order dated 5th September, 1994 dismissing the writ petition for want of prosecution and restoration thereof to its original number is therefore, rejected. Petition dismissed.