
(2012) 08 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 42302 of 2012

Mahesh Narayan Singh

APPELLANT

Vs

Additional District Judge, Court No. 1 and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Citation : (2013) 3 AWC 2666

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Sharad Malviya and A.N. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned counsel for the petitioner. O.S. No. 480 of 1990 filed for partition was decreed on 19.2.1998. Some of the defendants had appeared in the suit however petitioner who was also one of the defendants had not appeared hence against him suit was decreed ex parte. For setting aside the ex parte judgment and decree, restoration application was filed on 31.7.2004, i.e., after more than six years alongwith delay condonation application which was registered as Misc. Case No. 51 of 2004. Civil Judge, Senior Division-II, Jaunpur rejected the restoration application through order dated 13.1.2006. Against the said order petitioner filed Misc. Civil Appeal No. 17 of 2006. A.D.J. Court No. 1, Jaunpur dismissed the appeal on 22.5.2012, hence this writ petition.

2. In the impugned orders it is mentioned that summons of the suit were served upon the petitioner through refusal. Postman reported that petitioner had refused to accept the summons. The argument of learned counsel for the petitioner that as he had denied having refused to accept any registered envelop it was essential for the other side to examine the postman is not tenable. It is not necessary to examine the postman in such situation. The other argument is that suit was transferred from one court to another hence under Rule 89A of General Rules (Civil) information should have been given to the petitioner. However prior

to the transfer the Court had held the service upon defendant petitioner to be sufficient through refusal and he had not engaged any counsel hence provisions of the Rule were not applicable and it was not at all necessary for or required by the transferee court to issue fresh summons. The words used in the said Rule are "if any party is unrepresented information shall be sent to his registered address." It refers to a party who appears without counsel and not to a party who does not appear at all in spite of sufficient service. Accordingly, there is no merit in the writ petition, hence it is dismissed.