

(2007) 07 AHC CK 0272

In the Allahabad High Court

Case No : C.M.R.A. No. 135056 of 2007 in C.M.W.P. No. 49997 of 2006

Mohd. Sayeed Qureshi

APPELLANT

Vs

Additional District Judge, Court No. 1 and Others

RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:

Citation : (2007) 7 AWC 6655

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Shamimul Hasnain, Krishna Kumar Shukla and K G. Srivastava, for the Appellant; Pankaj Naqvi, Radha Kamal Saraswat and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—The writ petition has been filed challenging the validity and correctness of the order dated 10.8.2006, passed by the revisional court.

2. According to the averments made in the writ petition, the Petitioner has failed to pay the rent of the shop in dispute and now he is in arrears of rent from 1.8.1997 onward to the tune of Rs. 10,800.

3. The case was filed in the Registry on 7.9.2006. It came up before the Court on 11.9.2006, when the following order was passed :

As prayed for by Sri Shamimul Hasnain, learned Counsel for the Petitioner let it be put up tomorrow as a fresh case.

4. Thereafter by order dated 18.9.2006, the Court dismissed the writ petition for non-prosecution and observed that :

On the last occasion when the case was taken up on 11.9.2006, the counsel for the Petitioner prayed that the case be taken up tomorrow dated 12.9.2006. On that date, when the case was called out none appeared to press the petition and the case was directed to be listed on 18.9.2006. Today when the case is taken up in the revised list, none appears to press it. Petition is dismissed for non-

prosecution.

5. Thereafter Civil Misc. Restoration Application No. 209587 of 2006, (hereinafter referred to as the First Restoration Application) filed on 27.9.2006 by a subsequent counsel was rejected vide order dated 6.11.2006, which is as under :

This application for restoration has been filed by the counsel, who has been engaged after the case was dismissed for default. Reasons for non-appearance can be given only by the counsel for whose default the case was dismissed and not by the counsel, subsequently engaged.

For the aforesaid reason, the application is not maintainable.

Rejected.

6. Aggrieved by the aforesaid order dated 6.11.2006 the Petitioner went in SLP (Civil) No. 895/2007, before Hon"ble the Apex Court.

7. The Petitioner withdrew the SLP for filing the recall application again. The order dated 25.1.2007 passed by the Hon"ble Apex Court in the aforesaid SLP is as under :

Counsel for the Petitioner seeks to withdraw this SLP with liberty to move the High Court again for recall of the order dismissing the petition in default supported by an affidavit of the counsel who was originally appearing.

The SLP is dismissed, as prayed.

8. Pursuant to the aforesaid order passed by the Hon"ble Apex Court this second restoration application has been filed on 23.5.2007.

9. When the application was taken up on 18th July, 2007, for hearing, the Court requested Sri Shamimul Hasnain, counsel for the Petitioner to argue the matter on merit. He replied that he has only been engaged to argued the matter on recall application and not the case on merit. Today when the case is listed he is not prepared to argue neither the restoration application nor the writ petition.

10. In the circumstances, since he is not prepared to argue the matter, the recall application is dismissed for non-prosecution. Stay order, if any stands rejected.