

(2014) 06 MP CK 0019
In the Madhya Pradesh High Court
Case No : M.A. No. 3994/2005

Prahalad Singh

APPELLANT

Vs

Bahori Singh

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 06 MP CK 0019

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : R.B. Pandey, learned counsel, Advocate for the Appellant; Anurag Tiwari, learned counsel, Advocate for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—This Miscellaneous Appeal is admitted and an interim stay has been granted, for the confirmation of which, the matter is posted today, but looking to the short controversy involved, the matter is heard finally.

2. This Miscellaneous Appeal is preferred against the order dated 16.11.2005 by which the application submitted by the appellant for restoration of the Civil Appeal has been rejected. It is contended that though the cogent reasons were assigned but the Lower Appellate Court erred in not considering those reasons and rejected the application of the appellant for restoration of Civil Appeal No. 16-A/94(New No. 11-A/97).

3. Per contra, it is contended by learned counsel appearing for the respondent that after recording the reasons, the Lower Appellate Court has reached to the conclusion that no cogent reasons were assigned for restoration of Civil Appeal and, therefore, no interference in the order passed by the Lower Appellate Court is called for.

4. On a perusal of the order passed by the Court below, it is clear that the appellant has given reasons for not appearing in the appeal on the date when it was fixed before the Lower Appellate Court, contending that he engaged the

counsel who was not prosecuting the appeal properly, therefore, he engaged another counsel for prosecuting the said appeal. The said counsel by name Mohan Singh was not well and, therefore, on the date when the matter was fixed for hearing before the Lower Appellate Court, could not appear. On account of his non-appearance, the Civil Appeal was dismissed on 04.02.1998. The findings recorded by the Court below are that the reasons for non-appearance were shown to be illness of the counsel on 2nd February, 2000, therefore, this could not be said that the said counsel was not in a position to appear on the date when the appeal was fixed for hearing. The appeal itself was dismissed on 04.02.1998, therefore, the reasons assigned by the appellant in the application cannot be accepted. However, it is noted that the Civil Appeal was to be heard on 03.02.1998, and since nobody appeared on that date on behalf of the appellant, the same was adjourned to 04.02.1998. Whether any notice of hearing or the date fixed was available with the appellant or not is not clear. Normally in the Civil Appeal, counsel appears on behalf of the parties and, therefore, it was the duty on the part of the counsel to show that he was not in a position to appear on a particular date. In view of the absence of the clear finding that the appellant was aware of the date of hearing, atleast the appellant was not to be held responsible for non-appearance, and for that reason, the appeal could have been restored to its original number. It is settled law that the litigant may not suffer on account of the fault of his counsel.

5. That being so, the appeal is allowed. The order impugned is set aside. The application for restoration of Civil Appeal No. 16-A/94 (New No. 11-A/97) of the Court of 4th Additional District Judge, Jabalpur, is hereby allowed. The said Civil Appeal is restored to its original number. It is directed that the appeal be heard and decided preferably within a period of three months from the date of communication of this order. It is also made clear that no further opportunity for addressing the Civil Appeal on merit would be granted to the appellant, in case the appellant fails to make arrangement for hearing of the appeal on merits on the date so fixed by the Lower Appellate Court.

6. The appeal is allowed and disposed of accordingly. However, there shall be no order as to costs.