
(2016) 07 AHC CK 0124
In the Allahabad High Court
Case No : Writ-B No. 50408 of 2002

Prahlad

APPELLANT

Vs

Dy. Director of Consolidation

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Citation : (2016) 132 RD 318

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Pradeep Kumar Pandey, Advocate, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar Mishra, J.— Heard Shri P.K. Pandey, learned counsel for the petitioner and Shri Bhanu Bhushan Jauhari for the contesting respondent No. 3.

The instant writ petition arises out of proceedings for allotment of chaks and seeks quashing of the order dated 1.10.2002 passed by the Deputy Director of Consolidation, Shahjahanpur whereby a restoration application filed by the respondent No. 3 has been allowed.

2. The submission of learned counsel for the petitioner is that a revision filed by the respondent No. 3 was fixed for hearing on 8.7.2002. The revision was heard and 15.7.2002 was fixed for delivery of judgment on which date, the judgment was actually delivered and the revision filed by the respondent, was dismissed.

3. On 24.7.2002, the respondent No. 3 filed a restoration application alleging that 8.7.2002 was fixed for hearing of the revision. On that same date, two revisions, filed by the sons of the respondent, were also fixed. It is the case of the respondent that all the three revisions were adjourned for 15.7.2002. On this date, namely 15.7.2002, the revisions filed by the sons of the respondent, were adjourned for 22.7.2002. The petitioner kept waiting but his revision was not called out. However, he was informed by the reader that the matter had been

adjourned for 22.7.2002. On 22.7.2002, the lawyers were on strike and, therefore, the matters were adjourned for 29.7.2002. The petitioner engaged a new counsel on 23.7.2002 and when the file was searched for, it came to light that the revision had been dismissed on 15.7.2002, and therefore, the recall application.

4. Deputy Director of Consolidation allowed the restoration application on the ground that perusal of the records of the revisions filed by the sons of the respondent showed that correct facts had been stated in the restoration application by the respondent.

5. Contention of learned counsel for the petitioner is that on 8.7.2002, the hearing of the revision filed by the respondent was concluded and 15.7.2002 was fixed for delivery of judgment, on which date, the judgment was actually delivered. The order-sheet of 8.7.2002 bears the signature of the respondent. It is, therefore, clear that the revision, filed by the respondent, had been dismissed on 15.7.2002 after hearing the parties. The order was not ex parte and could not have been recalled. Even otherwise no finding has been returned in the impugned order, allowing the restoration application, that the order recalled, was ex parte.

6. Shri Bhanu Bhushan Jauhari, learned counsel for the respondent No. 3 has reiterated the facts noticed above. He submits that the order dated 15.7.2002 was clearly ex parte and the same has rightly been recalled. Further submission is that the petitioner is in no way prejudiced by this order. He will suffer no injury in case the revision is decided on merits after hearing the parties. It has lastly been contended that along with restoration application, the respondent had filed an affidavit. This affidavit remained uncontroverted and, therefore, the same was necessarily to be believed. Since, the impugned order has been passed relying upon such an un-rebutted affidavit, the order impugned is liable to be affirmed.

7. I have considered the submissions made by learned counsel for the parties and perused the record.

8. Perusal of the impugned order reveals that though it sets aside the order dated 15.7.2002, it does not record that this order was ex parte. The only reasoning in the impugned order is that the case set up by the respondent in his restoration application is borne out from the record of the other two revisions that had been filed by his sons.

9. In my considered opinion, this finding is not enough for recalling the order, especially, in view of the fact that the order-sheet of 8.7.2002 clearly records that the parties have been heard and the judgment reserved, fixing 15.7.2002 for its delivery. This order-sheet has been signed by respondent No. 3. In the aforesaid facts and circumstances, it was not open for the respondent to have claimed to the contrary.

10. It was also relevant to note that there is no allegation either in the

restoration application or in the impugned order that the revision filed by the petitioner had been connected with the revisions filed by his sons. For the same reason merely because some other revision was adjourned, it would not necessarily entail adjournment of the revision filed by the petitioner.

11. In view of the contention that the affidavit, filed in support of the restoration application, had remained uncontroverted, this Court has examined the averments made in this affidavit of the respondent filed in support of the restoration application. In this affidavit, it has categorically been averred that 8.7.2002 was the date fixed for hearing of the revision. In paragraph Nos. 3 and 4 of the affidavit, it has been stated that the respondent along with his sons had come to Court and on that date, the revision of the petitioner and the two revisions filed by his sons were adjourned for 15.7.2002 for hearing, on which date, the respondent-revisionist and his counsel appeared to argue the case but the case was never called out. They were informed by the reader that the revisions filed by the sons of the respondent had been adjourned for 22.7.2002. On 22.7. 2002, the lawyers were on strike and these two revisions were adjourned for 29.7.2002. It has next been averred that on 23.7.2002, the revisionist engaged a new counsel, who upon enquiry, discovered that the revision had already been dismissed 15.7.2002. It is lastly been averred that the order-sheet dated 15.7.2002 does not bear the signature of the revisionist-respondent and, therefore, the order passed on this date is ex parte.

12. From the averments noticed above, it is clear that there is no categorical averment that the respondent or his counsel had not argued in the matter on 8.7.2002, which was the date fixed for hearing. This coupled with the fact that order-sheet of the said date bears the signature of the respondent and it records that the hearing had been concluded and it fixes 15.7.2002 for delivery of judgment, the contention of counsel for the respondent No. 3, cannot be accepted.

13. There is yet another aspect, which casts a very serious doubt upon the case of the respondent. Once the respondent had stated that the matter had been adjourned for 29.7.2002, this Court is not able to understand as to why the record of the revision of the respondent was searched on 23.7.2002. The Court also fails to understand as to why no enquiry was made on 15.7.2002 or immediately thereafter because it is alleged in the affidavit filed in support of the restoration application that the matter was not called out on 15.7.2002.

14. It is also necessary to note that there is nothing in this affidavit, which would even remotely be construed as a denial of the signature of the respondent No. 3 on the order-sheet of 8.7.2002 when the revision is stated to have been heard finally. This Court also finds that the affidavit filed along with the restoration application does not contain necessary averments, which would read to an unescapable conclusion that the order dated 15.7.2002 was an ex parte order. This Court is constrained to hold that even if no counter affidavit was filed to the affidavit in support of the restoration application, the same will not improve the

case of the respondent No. 3.

15. Even otherwise as already noticed herein above, the order dated 15.7.2002 could have been recalled only on a finding that it had been passed ex parte and in absence of such a finding the order impugned, which allows of the restoration application of the respondent No. 3 is not liable to be sustained.

16. In the facts and circumstances of the case, and in view of the above discussion, this Court is constrained to hold that the order dated 15.7.2002 was not an ex parte order and, therefore, the same was wrongly and illegally recalled for extraneous and irrelevant considerations.

17. In view of the above, the petitioner has made out of the case in his favour. Accordingly, I set aside the impugned order dated 1.10.2002 and allow the writ petition.

18. In the facts and circumstances of the case, there shall be no order as to costs.