
(2010) 08 SHI CK 0089
In the High Court Of Himachal Pradesh

Prem Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2010) 08 SHI CK 0089

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—This revision has been directed against order dated 10.9.2009 passed by learned Civil Judge (Jr. Division), Court No. 4, Shimla, refusing to recall order dated 17.8.2007 whereby application of the petitioner for restoration of the suit was dismissed in default.

2. The brief facts of the case are that petitioner had filed a suit for recovery against respondents No. 1 to 4. This suit was dismissed in default on 20.6.2005. The petitioner filed an application for restoration of the suit which was dismissed in default on 17.8.2007. The petitioner filed another application for restoration of the application which was dismissed in default on 10.9.2009 vide impugned order. It is the case of the petitioner that the restoration application was fixed on 17.4.2007 and on that date the case was adjourned to 17.8.2007 but inadvertently the counsel for the petitioner had noted in his diary next date as 18.8.2007 instead of 17.8.2007. On 18.8.2007, it was Sunday; later on counsel for the petitioner came to know that the case has been dismissed on 17.8.2007 for non-prosecution. It is the case of the petitioner that non appearance of the counsel in the case on 17.8.2007 is neither intentional nor willful. The counsel did not appear on 17.8.2007 as he had wrongly noted the date as 18.8.2007. In these circumstances, application was filed for restoration of the application which was wrongly dismissed.

3. The application was contested. It was submitted that conduct of the petitioner

shows that he is not interested in the matter and therefore, the application for restoration was rightly dismissed by learned Civil Judge on 10.9.2009. It was disputed that the counsel for the petitioner had wrongly noted the date in the diary.

4. I have heard the learned Counsel for the parties. The petitioner had filed a suit for recovery against respondents No. 1 to 4 in the year 2004. The suit was dismissed in default on 20.6.2005. The application for restoration of the suit was also dismissed on 17.8.2007. The petitioner had filed an application for restoration of the application which was also dismissed in default on 10.9.2009. It is stand of the petitioner that the case was fixed on 17.4.2007 and on that date it was adjourned to 17.8.2007 but his counsel in the Court below inadvertently noted wrong date in the diary as 18.8.2007. Later on the counsel for the petitioner in the Court below came to know that the application for restoration has been dismissed on 17.8.2007. In these circumstances, he filed the application for restoration of the application which was dismissed.

5. The learned Civil Judge (Jr. Division) has dismissed the application for two reasons, one the application for restoration of the application was not signed by the petitioner and secondly petitioner had not appeared in the Court below to state on oath that he and his counsel had noted down the wrong date of hearing. It is no body's case that petitioner had withdrawn the vakalatnama which was given by him to his counsel. Therefore, filing of restoration application by the counsel cannot be said to be unauthorized. The learned Civil Judge has recorded in the impugned order that the counsel for the petitioner in support of the case has filed an affidavit in support of the application. In other words, he has accepted that he inadvertently noted the wrong date in his diary. The petitioner depended on his counsel for pursuing the case. The petitioner is not to gain anything by delaying decision in the suit. In the facts and circumstances of the case and in the interest of justice the petitioner has made out a case for setting aside impugned order, accordingly order dated 10.9.2009 is set aside subject to payment of Rs. 1000/- costs which shall be paid by the petitioner in the Court below. The parties through their counsel are directed to appear in the Court below on 25.8.2010. The learned Civil Judge shall proceed in the case in accordance with law.