
(2004) 03 AHC CK 0076
In the Allahabad High Court
Case No : Writ Petition No. 3351 (M/S) of 1984

Raghu Raj Shukla and Others	Vs	APPELLANT
IInd Additional District Judge and Others		RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (2004) 4 AWC 3413 : (2005) 3 RCR(Civil) 194

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Advocate : R.S. Pandey, for the Appellant; H.S. Sahai, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard Shri R. S. Pandey learned counsel for the petitioner and Shri U. S. Sahat holding brief of Shri H. S, Sahai.

2. The present writ petition has been filed against the impugned orders passed by the courts below in a proceeding under Order IX, Rule 9 of the Code of Civil Procedure.

3. The controversy in short is as under :

(1) Petitioner has filed a suit for permanent Injunction relating to an abadi land which was registered as regular Suit No. 216 of 1977. During the proceedings in the trial court an application was moved by the plaintiff for appointment of survey commission on 20.2.1982, since there was an issue as to whether land in question was the part of Plot No. 823. On 1.4.1982, the said application for appointment of survey commission was rejected by the trial court. When the learned presiding officer of the trial court has asked the learned counsel for the plaintiff to argue the matter and adduce the evidence so that he may proceed further, the learned counsel informed that he has no instruction and he shows his willingness to withdraw the power. In view of statement given by the learned

counsel for the plaintiff the learned trial court had dismissed the suit by ex parte order dated 1.4.1982.

(2) An application under Order IX, Rule 9 of the CPC was moved by the plaintiff/petitioner before the trial court, which was rejected by the impugned order dated 28.7.1982, certified copy of this order has been filed as Annexure-3 to the writ petition. The trial court had arrived to the conclusion that the plaintiff had deliberately not attended the Court on the said date and accordingly the application for restoration of the suit was not liable for acceptance on account of insufficient ground.

(3) An appeal was preferred against the order of trial court dated 16.4.1982. Learned appellate court had also dismissed the appeal with a finding that the plaintiff was negligent to prosecute his case and the dismissal of suit in the absence of plaintiff or his counsel was rightly done by the trial court. The appellate court however, proceeded to hold that the contention of appellant No. 1 (of the appeal) that he arrived in the Court campus after inordinate delay was seemed to be concocted fact. The plaintiff submission was that the Dharmraj Shukla was used to do pairvi of the suit who had gone to pilgrimage and on account of his absence no effective pairvi was done.

4. After going through the records and judgments of the court below it appears that both the courts below had closed their eyes to the fact that the plaintiff's counsel himself had withdrawn from the suit resulting in dismissal of suit for non-prosecution. It was open for plaintiff's counsel to move an application for adjournment of case in case evidence was not available or by showing other reason. It appears that learned counsel for the plaintiff has not discharged duty in accordance to professional ethics and proceed ahead to withdraw himself from the suit in question.

5. Once the counsel had withdrawn from the suit it was incumbent on the trial court to Issue fresh notice to the plaintiff by fixing a date. The trial court should have not proceeded to dismiss the suit in the absence of counsel. The other facts which borne out from the records is that the counsel had withdrawn himself from the suit without permission of the Court which was also an incorrect step on the part of counsel and the trial court itself, by proceeding ahead to dismiss the suit in question for non-prosecution.

6. Counsel for the petitioner had relied upon the judgment of Apex Court in Rafiq and Another Vs. Munshilal and Another, .

7. In a similar circumstance heavy burden lies not only on the Presiding Officer of the Court but also on the advocates. The Court should take care that powers or vakalatnama filed by the advocates should not be permitted to be withdrawn without obtaining prior permission. In case such permission is granted then it shall be incumbent on the Court to inform the plaintiff or defendants as the case may be to make alternative arrangement or engage another counsel. Similarly an advocate In such cases should also not withdraw the power without prior

information to the plaintiff or in the absence of plaintiff, otherwise it may amount to serious professional misconduct and the counsel can be prosecuted u/s 35 of the Advocate Act. Whenever the vakalatnama is being withdrawn either with the permission of Court or otherwise then the trial court should communicate the party whether it is plaintiff or defendant relating to the withdrawal of power or vakalatnama with direction to make alternative arrangement. Presiding Officer of the Courts should not act in a mechanical manner but their intention should be to provide justice in accordance to law.

8. In the present case the trial court would have informed the plaintiff after withdrawal of power to make alternative arrangement, the plaintiff would have not suffered from pain and mental agony since last 19 years on account of pendency of present writ petition.

In view of above, impugned order and judgment of the court below are not sustainable under law.

The contention of the learned counsel for the respondent Shri U. S. Sahai submits that there was negligent on the part of the plaintiff as held by the trial court seems to be not tenable.

9. Under the above facts and circumstances writ petition is allowed. Writ in the nature of certiorari issued, quashing the impugned orders dated 29.3.1984 and 28.7.1982 contained in Annexures-4 and 3 to the writ petition with all consequential benefits. The suit shall be restored and preferably within a period of one year from the date of receipt of certified copy of this order in accordance to law.