
(2010) 04 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.A. No. 549 of 2010

Ram Kumar

APPELLANT

Vs

Subhash Sharma and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7, Order 9 rule 9

Citation : (2010) 2 MPJR 176

Hon'ble Judges : Piyush Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Piyush Mathur, J.

This is an Appeal preferred against Order Dated 10.03.2010, whereby the First Additional District Judge, Bhind, has dismissed the Application preferred under Order 9 Rule 9 of CPC seeking restoration of Claim Case No. 119/2008 Ram Kumar Vs. Subhash Chandra Sharma & Others, wherein it was demonstrated by the Appellant that he could not attend the Court on date 25.07.2008, on account of floods in his village and the adjoining area and since the next dates 26.07.2008 and 27.07.2008 were Saturday and Sunday, an Application seeking restoration of Claim Case No. 119/08 was immediately filed on the first working day, i.e, date 28.07.2008; whereafter the bonafide of the Appellant could have been evaluated and based upon the reasons of non-appearance, the Claim Case ought to have been restored to its Original Number.

I have heard the learned Counsel for the Appellant and perused the Order passed by the Court below, wherein a very technical and pedantic attitude seems to have been adopted, while rejecting the Application preferred under Order 9 Rule 9 of CPC, without appreciating that the Restoration Application was filed immediately after passing of the Order of dismissal of the Claim Case.

In view of the aforesaid, I am satisfied that the Appellant has made out a good

case for restoration of the Claim Case, therefore, the Order passed by the First Additional District Judge in MCC No. 1/2009 passed on date 10.3.2010 is hereby set aside without issuing any notice to the respondents, as the Claim Case was pending before the concerning Court not only for effecting the service on the Respondents, but also for considering the Application preferred by the Respondent No. 3 under Order 9 Rule 7 of CPC, whereafter there was no necessity for the Court to have dismissed the Claim Petition.

Consequently, this Appeal is allowed and the Order passed by the Court below dismissing the Claim Case is hereby set aside and the Claim Case bearing No. 119/08 (Raj Kumar Vs. Subhash Chandra Sharma & Others) is restored to its Original Number for its disposal on merits.