
(1987) 02 AHC CK 0051
In the Allahabad High Court
Case No : Writ Petition No. 508 of 1984

Ram Raj & Others

APPELLANT

Vs

D.D.C. & Others

RESPONDENT

Date of Decision : 02-02-1987

Acts Referred:

Citation : (1987) 02 AHC CK 0051

Hon'ble Judges : K.N.Misra, J

Final Decision : Dismissed

Judgement

K.N. Misra, J.—This writ petition is directed against the order dated 31.10.1983 passed by the Deputy Director of Consolidation, Faizabad by which he has rejected the application for restoration moved by the petitioners.

2. Briefly stated, the facts of the case are that the petitioners had filed a revision on 20th March, 1982 against the order dated 1.2.1982 passed by the Assistant Settlement Officer, Consolidation. This revision was kept undated. It has been averred by the petitioner that no notice was received from the court of the Deputy Director of Consolidation and the revision was dismissed in default vide order dated 12.7.1982 passed by the Deputy Director of Consolidation. On coming to know about it, the petitioners had moved application for restoration on 4.8.1982. It was asserted by the petitioners I in the restoration application that they had no information about the date fixed in the revision as no notice was served on them. No objection was filed by the opposite party to this restoration application. This restoration application was fixed for hearing on 9.3.1983, but it was dismissed in default on the date as the petitioner No. 22 Ram Jiyawan, who was doing Pairvi in the revision on behalf of the petitioners, could not attend court as he is said to have suddenly taken ill while on the way while coming to court. He is said to have stayed at Gosainganj Bazar for taking treatment for his ailment of abdominal pain and vomiting. He, however, with great difficulty reached court on said date but found that the case was already dismissed in default. He returned to his home for making arrangement for funds and

thereafter an application for restoration was moved by the petitioners on 22nd March, 1983. A prayer for the restoration of the application for restoration and also the revision was made. No objection was filed to this application nor any counter affidavit was filed on behalf of the opposite party No. 3. This application was, however, rejected by the Deputy Director of Consolidation vide order dated 31.10.1983. Aggrieved by it the petitioners have preferred this writ petition.

3. No one has turned up to oppose this writ petition on behalf of opposite party No. 3 inspite of sufficient service of notice.

4. Learned counsel for the petitioners Sri S.K. Mehrotra, Advocate urged that the Deputy Director of Consolidation has rejected the restoration application of the petitioners on an erroneous ground by wrongly stating in the order that the petitioners are habitual in making default in appearance and in, applying for restoration. Learned counsel stoutly refuted the observation to that effect made by the Deputy Director of Consolidation in the impugned order and further contended that such could not be a ground for rejecting the restoration application when sufficient cause was shown for nonappearance of petitioner No. 22 on 9.3.1983 when while coming to court he was taken ill on the way due to vomiting and abdominal pain and had reached court late on the date. These facts were stated in the restoration application moved by the petitioners on 22nd March, 1983. Learned counsel urged that since these facts were not controverted by the opposite party No. 3 and, as such, the Deputy Director of Consolidation erred in taking a view that no sufficient cause was shown for nonappearance in the case on 9th March, 1983.

5. I have considered the averments made in the writ petition and have also perused the impugned order. It appears that the Deputy Director of Consolidation was much influenced by the fact that there had been default in appearance on behalf of the petitioners on previous occasions, which led him to express that the petitioners are habitual in making default in appearance in the case. It is no doubt correct to say that the revision was dismissed in default vide order dated 12.7.1982. The petitioner had thereupon moved application for restoration on 4.8.1982 wherein it was stated that they had no information about the date fixed in the revision, which was kept undated at the time of its presentation. This restoration application was subsequently rejected in default of appearance on 9.3.1983. A fresh application was [thereupon moved by the petitioners for restoration of the application for restoration and also the revision. It was averred on behalf of the learned counsel for the petitioners that Ram Jiyawan, petitioner No. 22 was taken ill while coming to attend court on 9.3.1983. After taking some treatment in Gosainganj Bazar for his ailment of sudden vomiting and abdominal pain, he is said to have reached court on same day a little late when the restoration application was already dismissed. These facts were not controverted by the opposite party No. 3. The Deputy Director of Consolidation appears to have rejected the application on the socalled past conduct of the petitioners by dubbing them to be habitual defaulters. There appears to be no justification for

such observation. However, be as it may, I am of the opinion that if there is valid excuse for the petitioners' absence on the date when the restoration application was dismissed for default, the previous negligence or want of diligence on their part to prosecute their case could not be made a ground disentitling the petitioners for restoration of the case. The facts stated in the application were not controverted and it was asserted by the petitioners that Ram Jiyawan (petitioner No. 22), who was doing Pairvi on behalf of the petitioners in the revision could not attend the court in time as he was suddenly taken ill while coming to court.

6. Thus, it appears that sufficient cause was shown by the petitioners indicating the circumstances under which petitioner who was doing Pairvi in the case could not reach court in time on 9.3.1983. Learned Deputy Director of Consolidation has, thus, erred in rejecting the application for restoration on erroneous ground. In my opinion, the past conduct of the petitioner and previous negligence or want of diligence on their part to prosecute their case could not be made the basis for rejecting the application for restoration moved by the petitioners wherein sufficient cause was shown for nonappearance of petitioner No. 22, Ram Jiyawan, who had reached court late due to his sudden illness while coming to court.

7. It is well settled that court's discretion should be exercised in favour of hearing and not to shut out hearing. (See *Ramji Das and others v. Mohan Singh*, 1978 Allh. Rent Cases 396). In *The State of West Bengal v. The Administrator, Howrah Municipality and others etc.* (AIR 1972 SC 749) it has been held that the expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

8. It, thus, appears quite appropriate in the interest of justice that the dispute between the parties should be decided on merits and a liberal view deserved to be taken in restoring the case dismissed in default unless the party is guilty of wilful default and there are grave laches on its part in pursuing the case. Although it would be difficult to precisely indicate as to and on what facts the matter would construction sufficient cause for restoring the case dismissed in default, but it may be stated that unless a party is guilty of grave laches in prosecuting his case, the court's discretion should be exercised in favour of hearing and not to shut out hearing. During consolidation operations the right and title of the parties are finally determined, and, as such, it appears quite just and proper to decide the case on merits, especially when it cannot be said that the petitioner are guilty of willful negligence or inaction on their part.

9. Thus, in view of the above I find that the Deputy Director of Consolidation has acted illegally and with material irregularity in exercise of jurisdiction in rejecting the restoration application, The impugned order dated 31.10.1983 passed by the Deputy Director of Consolidation, Faizabad is therefore, quashed and he is directed to restore the revision on merits after giving due notice and opportunity

of hearing to the parties.

10. No order as to costs.