
(2014) 07 MP CK 0163
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3522/2008

Ramsahay Daroga

APPELLANT

Vs

Arun Kumar Daroga

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 151
Constitution of India, 1950 — Article 227

Citation : (2014) 07 MP CK 0163

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Sanjay Sharma, Advocate for the Appellant; Lokendra Shrivastava, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.—This petition filed under Article 227 of the Constitution challenges the order dated 30.6.2008 (Annexure P-1) and 13.2.2007 (Annexure P-2). The petitioner/plaintiff's suit was dismissed for want of prosecution on 9.3.2001. Against that the plaintiff filed an application for restoration which was decided by Court below on 30.1.2002 (Annexure P-3). The suit was directed to be restored to its original number by directing the plaintiff to deposit Rs. 500/- as cost within ten days. The petitioner did not deposit the cost and preferred appeal against the order dated 30.1.2002. The said appeal was registered as appeal No. 13/2002.

2. Learned counsel for the parties fairly admit that the said appellate order is not placed on record but the appeal was dismissed. Thereafter, the petitioner filed an application under Order 9 Rule 9 read with Section 151 C.P.C. (Annexure P-4). In this application it was prayed that the petitioner has not suppressed any material facts. Erroneously he could not deposit Rs. 500/- as directed by the Court while restoring the matter. In these circumstances, it is prayed that the petitioner be excused and he be permitted to deposit the amount of cost and his main suit 82-A/2000 be restored to its original number. The trial Court rejected the said

application on 30.6.2008.

3. Criticizing this order and the order dated 13.2.2007 (Annexure P-2), it is submitted that the Court below has erred in mechanically treating this application under Order 9 Rule 9 CPC. The Court has ample power to pass necessary order to secure the ends of justice. Under erroneous belief and wrong legal advice, the petitioner filed appeal against the restoration order. Petitioner apologized for the same and submits that court should have accepted the application Annexure P-3.

4. Shri Lokendra Shrivastava submits that second application under Order 9 Rule 9 CPC was not maintainable. The Court below has not committed any legal error which warrants interference by this Court under Article 227 of the Constitution. He supported the impugned order.

5. I have heard the learned counsel for the parties and perused the record.

6. In the opinion of this Court, there was no occasion for the petitioner to prefer appeal against the order Annexure P-3. The said appellate order has attained finality. No doubt that second application under Order 9 Rule 9 CPC (Annexure P-4) is not maintainable, but the question is whether petitioner can be left remedy-less. On perusal of the record, it is gathered that petitioner unnecessarily assailed the order dated 30.1.2002 by preferring appeal. Thereafter also he did not deposit the amount of cost. The Court below in Annexure P-1 and P-2 have given finding that the petitioner has made incorrect allegations when another application was filed (para 6 of Annexure P-4). In view of aforesaid, it is clear that the conduct of the petitioner was not proper. However, the order dated 30.1.2002 (Annexure P-3) shows that the Court restored the matter subject to payment of Rs. 500/-. It was directed to be paid within ten days. However, no consequence of non-payment is mentioned in the order.

7. In the peculiar facts of this matter, I deem it proper to permit the petitioner to deposit the cost amount by further imposing cost because of his conduct. The petitioner in para 7 of Annexure P-4 has showed his willingness to deposit any further amount which can be directed to be paid by the Court.

8. Considering the aforesaid, it is directed that if petitioner deposits Rs. 5000/- as further cost in addition to Rs. 500/- already imposed by Annexure P-3, his Civil Suit No. 82-A/2000 shall stand restored. In other words, if petitioner in total pays Rs. 5500/- as cost, aforesaid case shall stand restored. This order shall not be treated as a precedent. The orders Annexure P/1 & P/2 are quashed subject to payment of cost.

9. Petition is allowed to the extent indicated above.