
(2005) 09 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Special Appeal No. 382 of 2005

Ratan Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Citation : (2005) 4 RLW 2955 : (2005) 4 WLC 733

Hon'ble Judges : N.N. Mathur, J;Gopal Krishan Vyas, J

Bench : Division Bench

Advocate : D.K. Gaur, for the Appellant;

Judgement

N.N. Mathur, J.—By the impugned order the learned Single Judge has refused to restore the writ petition dismissed for want of prosecution on the ground that the learned counsel for the appellants did not appears, even when the matter was called in second round. The learned Single Judge was not satisfied with the reason given by the learned counsel that when the case was called he was busy in another Court i.e. Court No. 8.

2. It is submitted by the learned counsel that when the matter was called in the first round, he was in fact arguing a matter before another Court. When the "matter was called in the second round he was slightly late, till then the case was dismissed. He made a mention within a minute but the same was not accepted.

3. Having heard learned counsel for the appellants, we are of the view that the special appeal deserves to be allowed. The learned Single Judge was justified in dismissing the writ petition for want of prosecution on non-appearance of the counsel when the matter was called up. It must be clearly understood that the law contemplates dismissal of petition in even of non- appearance of the party or its counsel. The law also permits and provides a wide discretion in resorting the petition dismissed for want of prosecution. The discretion for restoration is much more wider. While dispensation of justice the paramount consideration of the Court is not only simply to maintain discipline but to administer justice. This

Court in Rajasthan State Industrial Development & Investment Corporation v. Modi Trade Mills RLW 2003 (4) 2192, observed that a little more sensitive approach is required to be adopted by the courts in process of dispensation of justice. The court also desired that a party should not be driven out from the court by way of punishment for whatever reason. It will be travesty of justice if the court fails to exercise the power in restoring the proceedings except for rare and exceptional reasons. We may remind an age old well established principle that every court has inherent power to act *ex debito justitiae* to do real and substantial justice for which it exists. It has always been the anxiety of the courts to decide an issue on merits instead of driving out a party from the court for one or the other technical reason. Even if the party was remiss in complying with the directions of the court, the petition could have been restored on payment of cost. On refusal to restore a petition is bound to result in meritorious matter being thrown out and the cause of justice being defeated.

4. In an identical situation a Division Bench of this Court refused to restore the petition. When the matter was carried to the Apex Court. The Special Leave to Appeal was allowed restoring the petition by a brief order. The order passed by the Apex Court in State of Rajasthan v. Sal Khan, Civil Appeal No. 872/2004, decided on 8th February, 2004 observed as follows:-

"The High Court ought to have condoned the delay and restored the matter. The High Court not having done so, we do it now."

5. Consequently, the petition is allowed. The order of the learned Single Judge dated 3.8.2005 refusing to restore the writ petition is set aside. The application for restoration is allowed. The S.B. Civil Writ Petition No. 3514/2004 (Ratan Singh & Ors. vs. State & Ors.) is restored to its original number.