
(1990) 07 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 79 of 1980

Runku Ram

APPELLANT

Vs

Collector, Land Acquisition

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Land Acquisition Act, 1894 — Section 18

Citation : (1990) 2 ShimLC 208

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : R.K. Sharma, for the Appellant; M.S. Chandel, Asstt. A.G., for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—In this appeal, the Appellant is aggrieved by the judgment dated September 26, 1979 of the Additional District Judge, Kangra at Dharamshala, whereby his application under Order 9 Rule 9, CPC for; restoring his reference application was dismissed.

2. Land measuring 13 Kanals 3 Marias of the Appellant was acquired for the construction of Beas Dam and its reservoir as far back as in the year 1971. The Appellant preferred a reference application u/s 18 of the Land Acquisition Act which is dated December 2, 1971. From the order sheet of the Additional District Judge, Kangra at Dharamshala, it transpires that the reference application was received in his Court some time in March, 1975. Though there are number of orders in the file of the Additional District Judge summoning the parties but there is only one summon with the report of the Process-server that the village of the Appellant had submerged in Pong Dam and its residents had shifted and settled at some other place. On the basis of this report, the Additional District Judge passed the order dated July 5, 1976 dismissing the reference application holding that it was the duty of the reference-applicant to have informed the Court of his

new address.

3. On coming to know about the order dated July 5, 1976, the Appellant filed the application under Order 9 Rule 9, Code of Civil Procedure. The sufficient cause shown was that he did not receive summons in the reference application as he had settled at some other place and was busy in the construction of house etc. No reply was filed by the Respondent-Collector Land Acquisition. On the issues framed by the Additional District Judge, only the statement of the Appellant was recorded. The Respondent did not produce any evidence. The Additional District Judge dismissed the application as time barred and held that there was no sufficient ground to restore the reference application. Hence the present appeal.

4. I have heard the parties and in my opinion, the appeal deserves to be allowed as in the facts and circumstances of the present case, neither there was any justification to dismiss the reference application nor not to restore it on the sufficient cause shown in the application under Order 9 Rule 9, Code of Civil Procedure. The Appellant has been deprived of the remedy of the reference application for no fault of his. I find that in his reference application dated December 2, 1971 filed before the Land Acquisition Officer for forwarding it to the Court of District Judge, he gave his present address as resident of village Kohli, Post Office Bharmar, Tehsil Nurpur. But no efforts were made by the Additional District Judge to serve him on that address. The summons were sent on the old address of the Appellant, that is, village Samralian, Post Office Mangwal, Tehsil Dehra, where his acquired land was situated and to which village he originally belonged. The "present address" given on the application dated 2-12-1971 is the address given by the Appellant in the present appeal. Moreover, it was in the knowledge of the Collector Land Acquisition who was Respondent in the reference application and also of the Additional District Judge that the village of the Appellant had submerged in Pong Dam and he alongwith other residents of the village was rehabilitated at other places. In these circumstances, the Additional District Judge was not right in holding that it was the duty of the Appellant to have informed the Court of his new address. More so when the proceedings in the reference application had. started after more than four years.

5. While deciding the application under Order 9 Rule 9, Code of Civil Procedure, the Additional District Judge adopted a technical approach. Though there is no rebuttal to the statement of the Appellant that he acquired knowledge of dismissal of his reference application on 3-8-1977 when he came to Dharamshala to make enquiry in this regard, yet, the Additional District Judge has disbelieved him on the ground that he did not mention it in" his application under Order 9 Rule 9, CPC The Additional District Judge has also misread his statement that one Ram Parkash had apprised the Appellant regarding the dismissal in default of his reference application. The Appellant had not stated so. His statement was that Sh. Ram Parkash resident of Bharmar met him on August 2, 1977 and told him that the appeals of Tika Kohla Panjral were being taken up in the Court at Dharamshala. This information from Sh. Ram Parkash had prompted the

Appellant to visit the court of Additional District Judge, Dharamshala on the very same day, that is, August 3, 1977 and file his application under Order 9 Rule 9, Code of Civil Procedure, having come to know that his reference application had been dismissed in default on 5-7-1976. In these circumstances, the application under Order 9 Rule 9, CPC was within time and there was also sufficient cause to restore the reference application.

6. The judicial approach to such problems has undergone a drastic change. The Courts are there to do substantial justice between the parties by deciding the matters on merits and not to deprive the parties from hearing on technical grounds. The liberal interpretation of the expression "sufficient cause" as given by the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, is as follows:

...The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts.. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:--

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter. being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so...
7. In view of the above, the appeal is allowed and the order dated September 26, 1979 of the Additional District Judge, Kangra at Dharamshala, is set-aside The application under Order 9 Rule 9, CPC of the Appellant is allowed subject to

payment of Rs. 100 as costs. The reference application No. 1097 of 1975 is restored. The Additional District Judge (I), Kangra at Dharamshala, is directed to dispose of the reference application expeditiously. The parties are directed to appear before him on August 28, 1990. Costs of this Revision Petition on parties.