
(2001) 11 AHC CK 0037

In the Allahabad High Court

Case No : C.M. Restoration Application No. 12867 of 1991 in C.M.W.P. No. 3664 of 1991

Sajida Begum and Others

APPELLANT

Vs

Ist Additional District Judge, Farrukhabad and Others

RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2002) 1 AWC 131 : (2002) 1 UPLBEC 60

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : M.A. Qadeer, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—On 5th February, 1991, the learned counsel appearing for the petitioners undertook to serve the respondent Nos. 2 to 9 by Dasti notices within 15 days. No steps were taken to honour the said undertaking.

2. Noticing the lapse on the part of the petitioner to honour the undertaking given by their counsel, and in the absence of any prayer for condonation of the lapse or for time to take requisite steps, the Court, on 29th April, 1991, dismissed the petition for want of prosecution.

3. On 11th July, 1991, a restoration application, supported by the affidavit of the registered clerk of the counsel, was moved, though beyond the period of limitation yet it was not accompanied by any application for condonation of delay.

4. On 28th February, 1997, on the request of the learned counsel of the petitioners, the Court granted ten days' time for filing delay condonation application. Again, no delay condonation application was filed within the time granted. The matter was up before the Court on 14th March, 1997. On that date too, no affidavit was filed. The case was passed over at the behest of the learned counsel of the petitioners.

5. However, another delay condonation application supported by an affidavit of the registered clerk of the learned counsel of the petitioners was filed on 20th March, 1997.

6. On 25th April, 1997, the Court passed an order requiring the filing of the affidavit of the petitioner/petitioners and granted three weeks" time therefor. The order remained uncomplished inasmuch as no affidavit was filed.

7. On 16th May, 1997, two weeks" further time was allowed and the affidavit was filed on 29th May, 1997.

8. From the narration of the acts and events in the preceding paragraphs, the persistent default on the part of the petitioners is writ large.

9. Perusal of the averments made in the application for recalling the order dated 29th April, 1991, dismissing the petition for want of prosecution and the affidavits filed in support thereof, reveals that the sole ground for condonation of delay and recall of the order dated 29th April, 1991, is that the petitioners did not have the knowledge of the order dated 29th April, 1991.

10. The averments contained in paragraph 7 of the affidavit of Sri Saeedur Rahman Khan, the registered clerk of the learned counsel of the petitioners, filed in support of the restoration application on 11th July, 1991, contradict and belie the theory of the absence of the knowledge of the order dated 29th April, 1991. The averments in the said paragraph clearly and unambiguously show that on 29th April, 1991, the learned counsel had not appeared when the order was passed. But, after passing of the order which had noticed his absence, he appeared. It appears that after going through the order, the learned counsel made a request that the part of the order which recorded the absence of the learned counsel be scored out, and in due deference to the counsel, his request for deletion was acceded and the part of the order regarding his absence was scored out.

11. In view of the facts and circumstances noticed hereinabove, it cannot be said that the petitioners did not have the knowledge of the order dated 29th April, 1991. It cannot be gainsaid that notice to the counsel was notice to the petitioners. There was no obligation on the part of the Court to issue notice to the petitioners notifying the order dated 29th April, 1991.

12. Thus, the statement of the petitioners made in support of the theory of the absence of the knowledge of the order dated 29th April, 1991, is absolutely false. No credence can be given to it.

13. The ground for seeking the recall of the order dated 29th April, 1991, being apparently false, cannot be held to be sufficient for recalling the order dated 29th April, 1991. Indeed making false statement of fact may warrant appropriate action for perjury but. In the larger interest of justice, the Court leaves the matter to rest.

14. In the backdrop of what has been said above, the Court does not consider it to be in the interest of justice to allow the prayer of the petitioners for condonation of delay and recalling the order dated 29th April, 1991, and it is rejected accordingly.