
(1978) 08 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 868 of 1977

Sant Singh

APPELLANT

Vs

The Dist. Judge, Ballia and Others

RESPONDENT

Date of Decision : 17-08-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19

Citation : AIR 1978 All 559 : (1978) AWC 737

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : V.K. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition is directed against the judgment of District Judge, Ballia, dated 13-11-1976 dismissing the restoration application.

2. It appears from the order sheet which is annexure 3 to the present writ petition that on 12-4-1976 the deficiency in court fee was made good and the case was ordered to be listed on 20-4-1976. On the latter date a direction was made that information be sent for argument of the case fixing 7-7-1976. On 7-7-1976 the appeal was dismissed in default.

3. The appellate authority in its impugned judgment while dealing with the restoration application has observed as below :--

"It is true that the order as drafted by the reader does show that the information of the date of hearing of arguments should be given to the counsel, but I fail to find from the counsel as to what else information did he require in respect of obtaining knowledge about the date fixed for argument. Even in case he might have left the court before the date was fixed for hearing of arguments, it was his responsibility to have obtained the information at a subsequent date soon thereafter, Therefore the laches on the part of the applicant or his recognized agent can be no subject for taking any lenient view of the matter. Under the

circumstances I do not find any reason for the allowing of the application."

4. From the perusal of the order sheet it appears that on 20-4-1976 when a direction was made that information be given for argument, I think that non-compliance of that order is nothing but a mistake of the court itself and when the court is at fault, it is not proper to find fault with the counsel and to say that the counsel had not been vigilant to know about the date fixed in the case. It is a matter of common knowledge that when a date is fixed in the district Courts the order sheet is sent to the counsel concerned so that he may have information about further progress in the case. In the present case from a perusal of the order sheet attached to the writ petition it is evident that the counsel has no knowledge about the date fixed for argument on 7-7-1976. It is difficult for me to agree with the observation of the appellate authority that the client or the counsel was guilty of laches on their part. It may be that they did not attend the case as they had no knowledge about the date fixed and the explanation required of the client or of the counsel is for their absence on the date fixed. In this view of the matter I find that the appellate authority has indulged in surmises and conjectures in placing an onerous duty upon the counsel for knowing the date fixed in the case. Since the official of the court is at fault in not communicating the date to the counsel for the appellant, the appellant and his counsel were fully entitled to the lenient view of the matter. It is difficult to fasten liability in the circumstances of the case to the counsel or the petitioner. Rather, the mistake appears to be of the official of the court. In this view of the matter I feel that the appellate authority has not exercised its judicial discretion and has committed patent error in refusing the restoration application, little realising the mistake on the part of its official.

5. For the reasons given above, the writ petition succeeds and the impugned order dated 13-11-1976 is hereby quashed and the appellate authority is directed to hear the appeal on merits after giving due notice to the appellant as well as his counsel. No order as to costs.