
(2004) 12 JH CK 0032
In the Jharkhand High Court
Case No : C.R. No. 138 of 2004

Seba Agrawal (Smt.) and Others

APPELLANT

Vs

Kapildeo Narain Agrawal and Others

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

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

Citation : (2005) 1 JCR 125

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Ajay Kumar Singh, for the Appellant; Rajeev Sharma, for the Respondent

Judgement

Narendra Nath Tiwari, J.—In this civil revision application the petitioners have assailed the judgment dated 2.7.2004 passed by the 1st Additional District Judge, Sahebganj in M.A. No. 5/2003 whereby the 1st Additional District Judge has dismissed the appeal and affirmed the order of the Sub-Judge-I, Rajmahal in Miscellaneous Case No. 1/2001.

2. The petitioners were the plaintiffs. They filed Title Suit No. 13/86 in the Court of the Sub-Judge-I, Rajmahal praying relief for grant of mandatory injunction directing the defendants-opposite parties to vacate the suit house and for permanent injunction restraining them from dispossessing the plaintiffs. The defendants had appeared and contested the suit. Thereafter, on behalf of the plaintiffs, one witness was examined as PW 1. In the meanwhile, the sole plaintiff died and the petitioners were substituted in her place. They appointed an attorney by executing power-of-attorney, who, according to the petitioners, was given charge of looking after the said suit. The petitioners' case is that the said attorney duped the petitioners allegedly in connivance with the defendants-opposite parties and did not take proper steps. He also did not inform the petitioners about the progress of the case. Smelling foul the petitioners then appointed another attorney. Due to the negligence of the previous power-of-

attorney holder, the said suit was dismissed for default on 5.8.2000. The petitioners then unsuccessfully proceeded praying for recall of the order but ultimately were well advised to file miscellaneous case under Order IX, Rule 9 CPC. The same was registered as Miscellaneous Case No. 1/2001. In the said case the petitioners examined the witnesses in order to support their claim that they were prevented from appearing in the Court when the suit was called on for hearing under the circumstances beyond their control. On behalf of the defendant-opposite party one witness was examined. The learned Subordinate Judge-I passed an order dated 9.5.2003 in which he has taken into consideration the past laches of the petitioners and branded them "lethargic litigants", doubted their bona fide in agitating the issue under Order IX, Rule 9, CPC and observed that initially the petitioners had not come before the Court with clean hands and dismissed the miscellaneous case.

3. Aggrieved by the said order, the petitioners preferred miscellaneous appeal in the Court of the District Judge Sahebganj. The appeal was ultimately heard and disposed of by the 1st Additional District Judge, Sahebganj by the impugned judgment dated 2.7.2004 whereby he dismissed the appeal, repeating almost the same reasons recorded by the learned Subordinate Judge.

4. Mr. Ajay Kumar Singh, learned counsel appearing on behalf of the petitioners, submitted that the judgment/order of the Courts below are unsound, improper and passed in illegal exercise of jurisdiction. According to the learned counsel, the only consideration to be taken for deciding the case under Order IX, Rule 9, CPC is the sufficient cause for non-appearance when the suit was called on for hearing. According to the learned counsel, the Courts below have not given any finding that no sufficient cause was shown by the petitioners for their non-appearance when the suit was called on for hearing on the day it was dismissed, rather the Courts below have taken into consideration the past conduct and acted hypothetically in holding that initially the petitioners had not approached the Court with clean hands, which are not relevant consideration for dealing with a case under Order IX, Rule 9, CPC.

5. Mr. Rajeev Sharma, learned counsel appearing on behalf of the opposite parties, on the other hand, submitted that the judgment/order of the Courts below are sound and legal, inasmuch as, it would be evident from the records that the petitioners had been negligent in not attending the Courts on several dates and the Courts below have rightly taken into consideration their said conduct and have rightly passed the judgment/order.

6. After hearing the learned counsel for the parties and perusing the records, I find that the order of the learned Subordinate Judge-I passed in Miscellaneous Case No. 1/2001 as well as the judgment dated 2.7.2004 passed by the learned 1st Additional District Judge, Sahebganj are based on inappropriate considerations. The Courts below have cited examples of the past conducts and earlier negligence of the petitioners and have also raised doubts on their bona fide in approaching the Court initially but there is no finding that there was no

sufficient cause for their non-appearance when the suit was called on for hearing on the day the same was dismissed for non-prosecution. The learned Courts below have been thus swayed by improper and extraneous considerations in passing their order/judgment and have acted in exercise of their jurisdiction illegally and with material irregularity.

7. In the result, the impugned judgment dated 2.7.2004 passed in M.A. No. 5/2003 by the 1st Additional District Judge, Sahebganj as well as the order passed by the Sub-Judge-I, Rajmahal in Miscellaneous Case No. 1/2001 are hereby set aside. This revision application is allowed.

8. Since the matter is quite old and the suit is of 1986, on the basis of the materials on record and in absence of any specific finding of the Courts below this Court is of the view that the petitioners have made out a case for setting aside the order of dismissal of T.S. No. 13/86 by showing sufficient cause of their non-appearance when the suit was called on for hearing and also in order to avoid further protracted rigour, loss and harassment to the parties. This Court instead of remitting the matter back to the Courts below, allows the Miscellaneous Case No. 1/2001. The order of dismissal of the suit dated 5.8.2000 passed in Title Suit No. 13/86 is set aside. Title Suit No. 13/86 is restored to its original file and to its original stage. The trial Court is directed to expedite the hearing of the suit on merit and dispose of the same expeditiously preferably within a period of six months.

9. However looking to the conduct of the petitioners and also the loss and inconvenience caused to the opposite parties, this order is subject to payment of the cost of Rs. 7,500/- by the plaintiffs-petitioners to the defendants-opposite parties in the Court below within a period of one month from today.