
(1997) 03 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 146 of 1995

Sh. Ramesh Chand and Others

APPELLANT

Vs

Shri Bhalkhu Ram and Others

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 148

Citation : (1997) 2 ShimLC 302

Hon'ble Judges : M. Srinivasan, C.J

Bench : Single Bench

Advocate : Bhupinder Gupta, for the Appellant; N.D. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan C.J.

1. The Petitioners' appeal before the District Court Hamirpur was dismissed as abated when the Petitioners failed to bring on record the legal representatives of one of the deceased. The Petitioners challenged that order by filing FAO No. 114/1989 in this Court. By order dated 21-12-1994 this Court allowed the appeal and directed the parties to appear before the District Court on 24-1-1995. However, this Court made it conditional for the restoration of the appeal that the Petitioners should pay Rs. 500 as costs to the other side. When the matter was called before the District Judge on 24-1-1995, counsel represented the Appellants before the District Judge and Respondents 1 to 4. The 5th Respondent alone remained absent. When the District Judge found that the amount of Rs. 500 directed to be paid as costs by this Court was not paid, he dismissed the appeal. In his order the learned District Judge has pointed out that a representation was made before him on behalf of the Appellants that in the letter received from the Advocate who appeared as counsel in this Court there was no mention regarding payment of costs payable to the opposite side. Hence the Appellants prayed for time before the District Judge. The District Judge posed a question whether it was open to him to grant time when it had been fixed by this

Court. Referring to the judgment of the High Court of Punjab and Haryana in Prem Sagar and Others Vs. Phul Chand and Others, the learned District Judge has held that the direction to pay costs was a condition precedent and it had to be obeyed before the appeal could be considered by him. The learned Judge also pointed out that none of the Appellants appeared in person before him and they were only represented by the counsel. This order of the District Judge is challenged before me u/s 115 Code of Civil Procedure.

2. At the out-set, I have to point out that there is no error of jurisdiction whatever. It is too well settled that this Court can entertain a petition u/s 115, CPC only on fulfilment of any of the conditions set-out therein which read as follows:

- (a) the court below has exercised a jurisdiction not vested in it by law, or
- (b) the court failed to exercise a jurisdiction so vested, or
- (c) the court acted in the exercise of its jurisdiction illegally or with material irregularity.

I am unable to persuade myself to bring the order of the learned District Judge within any of the conditions referred to above.

3. Further there is one clinching circumstance in this case. When a representation was made on behalf of the Appellants before the District Judge that a letter recieved by them from the Advocate who appeared in this Court did not make a mention of the payment of costs, the said letter ought to have been produced before the District Judge in support of that statement. It is to be noted that the parties were not present in the Court. The representation was made only by the counsel who was present in the Court. If the counsel had been instructed to say so, he should have produced the said letter before the District Judge. In the absence of production of such letter, the District Judge was right in refusing to accept that statement and proceeding with the disposal of the appeal before him. The District Judge is also right in holding that he had no jurisdiction to extend the time fixed by this Court. The Petitioners had not approached this Court. The Petitioners had not approached this Court u/s 148, CPC for extension of time already fixed in FAO No. 114/89.

4. In the circumstances, there is no merit in this Civil Revision and it is dismissed. There will be no order as to costs.