
(2018) 11 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition No. 348 of 2018

Shakuntla Devi @APPELLANT@Hash State of H.P. and Ors

Date of Decision : 21-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 9 Rule 3, Order 9 Rule 4, Order 9 Rule 9
Constitution of India 1950 — Article 227

Citation : (2018) 11 SHI CK 0021

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : P.P. Chauhan, S.C. Sharma, Dinesh Thakur

Final Decision : Dismissed

Judgement

Sandeep Sharma

1. By way of present petition filed under Article 227 of the Constitution of India, prayer has been made on behalf of the plaintiff-petitioner (herein after

referred to as "the plaintiff") for quashing of order dated 9.7.2018, passed by the learned Civil Judge, Manali, in CMA No. 11/2018, titled as

Shakuntla Devi v. State of H.P. and Ors., whereby an application for restoration of suit having been filed by the plaintiff has been dismissed.

2. Facts, as emerge from the record are that the plaintiff filed suit for permanent prohibitory injunction against the respondents- defendants-State

(herein after defendants-State) in the Court of learned Civil Judge, Jr. Division, Manali, District Kullu, H.P., however fact remains that on 24.7.2017,

despite repeated calls learned counsel representing the plaintiff failed to put in appearance, as a consequence of which, suit having been filed by the

plaintiff, came to be dismissed in default.

3. Subsequently, plaintiff filed an application under Order 9 Rule 3 CPC read with

Section 151 CPC, praying therein for restoration of application

(Annexure P-6), available at page 27, however same was dismissed by the court below vide order dated 8.1.2018 (Annexure P-7), on the ground that

application is not maintainable since wrong provision has been mentioned. Plaintiff moved fresh application under Order 9 Rule 4 CPC, read with

Section 151 CPC (Annexure P-8) praying therein for setting aside order dated 24.7.2017, passed by the court below in CS No. 143/16, but since

applicant/plaintiff again mentioned wrong provisions in the application, application came to be rejected vide order dated 9.7.2018, as is evident from

Annexure P-10. In the aforesaid background, plaintiff has approached this court in the instant proceedings filed under Section 227 of the Constitution

of India, praying therein for restoration of suit after setting aside aforesaid orders passed by the court below.

4. Having heard learned counsel for the parties and perused material available on record vis-a-vis impugned order passed by the court below, though

this Court finds no illegality and infirmity in the impugned orders passed by the court below because admittedly, learned counsel representing the

plaintiff repeatedly mentioned wrong provisions of law while making applications for restoration of suit dismissed by the court below on account of non

appearance, but by now it is well settled that right of parties cannot be defeated mere on technicalities.

5. True, it is that in the case at hand, application for restoration of suit was to be filed under Order 9 Rule 9, but court below instead of directing the

counsel, to incorporate correct provision in the application, dismissed the applications repeatedly, as a result of which, great prejudice is caused to the

plaintiff, who not only was compelled to spend money repeatedly for engaging counsel, rather precious time of the Court was also wasted. Had the

court below cared to correct the provision, wrongly mentioned in the application by pointing out to the learned counsel for the plaintiff, probably, matter

would have not landed in this Court. Otherwise also, litigant cannot be allowed to suffer for fault, if any, on the part of the counsel. Pleadings, in any

shape, are always filed on behalf of the litigants by his/her counsel and as such, poor litigant cannot be allowed to suffer on account of omission, if any,

on the part of his/her counsel.

6. Consequently, in view of the detailed discussion made herein above, present

petition is allowed and orders 24.7.2018 and 9.8.2017, passed by the court below are quashed and set-aside. Now, let the matter be listed before the court below on 6.12.2018, to enable the court below to proceed with the matter without further delay in accordance with law. Learned counsel for the parties undertake to cause presence of their respective clients before the court below on the aforesaid date. However, it is made clear that in case plaintiff failed to remain present on the given date, order dated 24.7.2018, shall automatically revive and no more opportunity shall be afforded to the petitioner.. Registry to apprise the court below with regard to passing of the instant order, to enable it to do the needful. Accordingly, present petition is dismissed being devoid of any merits.

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