

(1979) 04 CAL CK 0018
In the Calcutta High Court
Case No : C.R. No. 2249 of 1978

Sm. Annapurna Chatterjee		APPELLANT
	Vs	
Sm. Sabita Guha and Others		RESPONDENT

Date of Decision : 27-04-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1979 Cal 338 : (1979) 1 CALLT 88 : 83 CWN 783

Hon'ble Judges : Ram Krishna Sharma, J; Murari Mohan Dutt, J

Bench : Division Bench

Advocate : Bhupendra Kumar Panda and Mrinal Kanti Roy, for the Appellant; N.C. Roy Choudhury, J.C. Dutt and Rathindra Kr. De for Opposite Party No. 1, for the Respondent

Judgement

M.M. Dutt, J.—This Rule is at the instance of the plaintiff and it is directed against order No. 18 dated June 27, 1978 of the Additional District Judge, 7th Court, Alipore. By the said order, the learned Additional District Judge dismissed the application of the petitioner u/s 151 of the CPC praying for the restoration of the appeal dismissed for non-prosecution.

2. The predecessor-in-interest of the petitioner filed a suit for partition being Title Suit No. 54 of 1963 in the 7th Court of the Subordinate Judge, Alipore, for partition by metes and bounds of the disputed property. The said suit was valued at Rs. 8,000/-. A preliminary decree was passed on April 11, 1963. Thereafter, a Commissioner for partition was appointed. He submitted his report on June 29, 1970. The final decree was passed on May 26, 1971 on the basis of the Commissioner's report. In the final decree, it was stated that the suit was valued at Rs. 24,000/-. That was obviously a mistake. The petitioner, however, was misled by the said statement in the final decree as to the value of the suit. Accordingly, he filed two appeals, one in the court of the Additional District Judge, Alipore and the other in the High Court. When the appeal in the court below came up for hearing, the petitioner prayed for an adjournment of the

hearing till the disposal of the appeal filed in this Court. The learned Additional District Judge, however, dismissed the prayer for stay and, it appears, that ultimately the appeal was dismissed for non-prosecution. On Nov. 3, 1976 this Court dismissed the appeal on the ground that it was not maintainable, for the value of the suit was Rs. 8,000/- and not Rs. 24,000/- as wrongly stated in the final decree. After the disposal of the appeal in this Court, the petitioner filed an application u/s 151 of the CPC before the learned Additional District Judge praying for restoration of the appeal under the above circumstances. The learned Additional District Judge, however, by the impugned order dismissed the said application. Hence this Rule.

3. There can be no doubt that the petitioner was misled by the wrong statement of the valuation of the suit in the final decree. It is obvious that the lawyer of the petitioner was also misled as he could not decide whether the appeal would be to this Court or to the court below. He, however, in his wisdom filed two appeals, one in the court below and the other in this Court. In our view, the learned lawyer had taken diligent steps in the matter so as to avoid any unnecessary risk. The statement in the final decree that the suit is valued at rupees 24,000/- is undoubtedly due to the carelessness and negligence of the officer of the Court who drew up the decree. As ultimate responsibility was with the Court which passed the decree, it was a default on the part of the Court in overlooking such a wrong statement. It is now well-settled that no person should suffer on account of the default of the Court. The learned Additional District Judge should have stayed the hearing of the appeal till the disposal of the High Court appeal as prayed for by the petitioner. In our opinion, the learned Additional District Judge should not have dismissed the appeal for non-prosecution. It is, however, contended that the application u/s 151 is not maintainable as there is a specific provision for restoration of the appeal that is, Order 41 Rule 19 of the Code of Civil Procedure. Such a contention commended to the learned Additional District Judge in dismissing the application for restoration. It is true that there is such a provision, but when the default is the default of the Court, the proper provision to apply is the provision of Section 151. In our view, no application is even required to be made, but the Court should in such circumstances, of its own, rectify the defect under its inherent power as soon as the defect is brought to its notice. Another ground that was relied on by learned Additional District Judge was that the application u/s 151 was barred by limitation. We do not, however, think that in the circumstances under which the application was made, there was any question of limitation. If a litigant is made to suffer on account of the default of the Court, the Court, in our opinion, will not be justified in refusing him to grant relief on technical grounds. In the circumstances, we are of the view that the learned Additional District Judge was not justified in dismissing the application of the petitioner u/s 151 of the CPC praying for the restoration of the appeal.

4. For the reasons aforesaid, the impugned order is set aside and the application of the petitioner u/s 151 of the CPC is allowed. The order of dismissal of the

appeal for non-prosecution is also set aside and Title Appeal No. 114 of 1972 is restored to file. The Rule is made absolute. There Will be no order for costs.

5. The learned Additional District Judge is directed to dispose of the appeal on merits in accordance with law and as expeditiously as possible and, if it is not otherwise inconvenient to him, he will dispose of the same within three months of the arrival of the records in his Court after notice to the learned Advocates of the parties.

Let the records be sent down at once.

Sharma, J.

6. I agree.