
(2012) 08 KAR CK 0150

In the Karnataka High Court

Case No : Writ Petition No. 23213 of 2012 (GM-CPC)

Smt. Salimabi

APPELLANT

Vs

City Municipality

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2012) 08 KAR CK 0150

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : M. Ravindranath, for Sri. Dayanand S. Patil, for the Appellant;

Final Decision : Dismissed

Judgement

Ravi Malimath

1. The petitioner / plaintiff filed a suit for permanent injunction and consequential reliefs. On 24.05.2012, when the matter was listed for evidence of the plaintiff, she did not appear and there was no representation made on her behalf. Thus, the matter was adjourned to 02.06.2012. On that day also, neither she was present nor her counsel was present. Hence, the suit was dismissed for non-prosecution.
2. Thereafter, an application u/s - 151 of CPC was filed by the counsel seeking restoration of the suit by setting aside the order dated 02.06.2012. The trial Court by the impugned order rejected the same. Hence, the present petition.
3. In support of the application seeking recalling the order of dismissing the suit for non-prosecution, an Affidavit of the counsel has been filed wherein he has stated that when the matter was posted for the evidence of the plaintiff she was not able to appear before the court as she was suffering from ill-health and that the counsel was engaged in another court and therefore the absence is bonafide and unintentional and that no prejudice will be caused to the other side, if the application is allowed.

4. Considering this application, the trial Court noted that even on the previous date when the case was posted on 24.05.2012 neither the plaintiff nor the counsel was present and inspite of their absence, the matter was adjourned to 02.06.2012. On 02.06.2012, neither the counsel nor the plaintiff was present before the court. Hence, the application was rejected.

5. On hearing the Learned Counsel and on examining the impugned order, I do not find any error committed by the trial Court in rejecting the application.

6. The application has been rejected based on the facts and circumstances of the case. The reason assigned in the Affidavit filed in support of the application is that the plaintiff was suffering from ill health. However, no medical certificate or an Affidavit of the party is produced to substantiate the same. Merely by stating that she was suffering from ill health, the counsel cannot expect the Court to accept the Affidavit and to recall the order. There is no genuine ground in the Affidavit to satisfy the Court with regard to non-appearance.

7. The second ground is that the counsel was engaged in another Court. This ground is not acceptable. It is for the counsel to make arrangements to sort out his cases when they are posted before the Court. Even otherwise, it is not the first occasion that he has remained absent. Even on previous date of hearing, the counsel was absent. No remorse is expressed in the Affidavit. Merely stating that the absence is bonafide and unintentional and that no prejudice will be caused to the other side, no remorse or otherwise is expressed by him. It is a prayer with a casual Affidavit expecting the Court to accept the same. The reasons assigned in the Affidavit do not constitute good ground to allow the application. The Affidavit lacks bonafide. In these circumstances, the trial Court has rightly passed the impugned order and the same is passed in consonance with the facts and circumstances of the case. I do not find any ground for interference. The petition being devoid of merits is rejected.