

(2016) 03 RAJ CK 0092

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2386 of 2016

Smt. Sheelu Singh & Anr.

APPELLANT

Vs

Narpat Singh Lakhawat & Anr.

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4, 148
Constitution of India, 1950 — Article 226

Citation : (2016) 3 WLN 203

Hon'ble Judges : Mr. Arun Bhansali, J.

Bench : Single Bench

Advocate : Mr. Vishal Sharma, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioners aggrieved against the order dated 03.12.2015 and 13.01.2016 passed by the trial court, whereby the application filed by the respondent-plaintiff under Order 9, Rule 4 and 9 CPC has been allowed and the time for depositing the costs as imposed by order dated 03.12.2015 has been extended respectively.

2. The respondent-plaintiff filed a suit for specific performance and permanent injunction against the petitioners. The petitioners filed written statement and resisted the same. On 24.11.2011, the counsel for the plaintiff pleaded no instructions and, consequently as neither the plaintiff nor anyone was present on his behalf, the suit was dismissed in default.

3. The plaintiff filed an application under Order 9, Rule 4 and 9 CPC seeking restoration of the suit.

4. The application was resisted by the petitioners-defendants, however, the trial court on coming to the conclusion that before pleading no instruction, the counsel should have issued notice to the plaintiff, however, as no instruction was pleaded without giving any such notice and as the application was filed within

five months of the dismissal, it was found that application was bona fide and allowed the same on payment of cost of Rs. 2,000/-. It was further ordered that on failure to deposit the costs, it would be deemed that the application has been dismissed.

5. Where after, the plaintiff filed another application under Section 148 CPC read with Section 151 CPC seeking extension of time for payment of the costs imposed.

6. After hearing the parties, the trial court allowed the application and extended the time as granted by it.

7. It is submitted by learned counsel for the petitioners that the trial court was not justified in allowing the application filed by the plaintiff as the plaintiff did not give any cogent reason for his non-appearance when the suit was dismissed in default; there was no reason for the trial court to restore back the suit. It was also submitted that even after the restoration was ordered the plaintiff did not pay/deposit the costs within the time granted by the Court, which clearly indicates the attitude of the plaintiff and, therefore, the orders impugned deserve to be quashed and set aside.

8. I have considered the submissions made by learned counsel for the petitioners and have perused the material available on record.

9. The trial court on coming to the conclusion that "no instructions" was pleaded by counsel for the plaintiff without giving any notice to him, restored the suit. There is no contradiction of the said finding recorded by the trial court and in view thereof, it cannot be said that the trial court committed any mistake in restoring the suit.

10. So far as the extension of time granted for deposit of the costs is concerned, the discretion exercised by the trial court while accepting application under Section 148 CPC is not open for questioning under Article 227 of the Constitution of India.

11. No case for interference is made out, the writ petition is dismissed.