
(1997) 09 OHC CK 0014

In the Orissa High Court

Case No : Miscellaneous Appeal No. 191 of 1997

Srimati Sundermani Dei

APPELLANT

Vs

Rama Chandra Mahari and Others

RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 12, Order 41 Rule 19

Citation : (1997) 2 OLR 513

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R.C. Das and K.B. Kar, for the Appellant; P. Patnaik, R. Das, M.R. Mohanty, R.K. Patra and D. Patra (R-6), for the Respondent

Judgement

P.K. Misra, J.—The present appellant had filed Title Appeal No. 15/43 of 1993/90 against the decision of the trial Court in O.S. No. 127/82. The said title appeal was posted to 2.1.1997 for hearing. On the said date, though hazira had been filed on behalf of the appellant, none appeared on behalf of the appellant when the appeal was called on for hearing and ultimately the appeal was dismissed for default. Subsequently, an application under Order 41, Rule 19, Code of Civil Procedure, was filed for re-admission of the appeal. In the said application it was stated that though the lawyer had filed the hazira, the file had been taken for engaging fresh set of lawyers. It was further stated that the lawyer who had earlier appeared in the case could not appear at the time of hearing as the file was not with him. The contesting opposite parties before the lower Court had filed objection denying these allegations. The appellate Court refused to re-admit the appeal on the ground that since heirs had been filed, the advocate for the appellant should have conducted the appeal. The appellate Court further observed that court-peon had been sent to inform the counsel for the appellant and yet there was no response.

2. It is no doubt true that when hazira had been filed, the counsel for the appellant should have remained present at the time when the case was called

and more so, when the Advocate was informed by the court peon. If the Advocate had any difficulty in conducting the case on account of the fact that the brief had been taken by the party for engaging some other lawyer, the Advocate should have mentioned the said fact by appearing before the appellate Court when the case was called on for hearing. By keeping quiet in spite of information sent through the peon, definitely the Advocate has not helped the cause of the appellant for whom he had earlier appeared. It may be that the Advocate must have felt embarrassed to appear before the Court to ask for time after hazira had been filed. Be that as it may, the cause of substantial justice should not suffer and the appellant should not suffer because of the unfortunate circumstances. It is quite evident that due to some misunderstanding and communication gap, appropriate steps could not be taken on behalf of the appellant resulting in the unfortunate dismissal of the appeal. However, in the interest of justice, it is necessary that the appeal should be re-admitted and disposed of on merit.

3. Accordingly, I direct that Title Appeal No. 13/43 of 1993/90 shall be restored to file subject to payment of Rs. 750/- as cost to respondent No. 6 or his counsel in the High Court on or before 30.9.1997. If the aforesaid amount is not paid within the stipulated period, the present appeal shall be deemed to have been dismissed. The parties are directed to appear before the appellate Court on 3rd October, 1997, on which date the appellate Court shall fix a firm date for hearing. The appeal should be disposed of expeditiously preferably by end of December, 1997. The appellate Court shall proceed to take up the matter on being satisfied about the payment of cost to respondent No. 6 or his Advocate in this Court for which purpose appropriate receipt shall be filed by the present appellant before the appellate Court.

4. Subject to the aforesaid direction, the appeal is allowed. There will be no further order as to costs.