
(2013) 12 AHC CK 0143
In the Allahabad High Court
Case No : F.A.F.O. (D) No. 273 of 2010

State of U.P. and Others

APPELLANT

Vs

Daljeet Singh and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 102 ALR 793 : (2014) 122 RD 641

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

Rajiv Sharma and Satish Chandra, JJ.—Heard Sri H.P. Srivastava, learned Additional Chief Standing Counsel for the State and Sri V.N. Shukla, learned Counsel for the respondents. A declaratory suit has been filed on 15.3.2000 by the respondents for mandatory injunction and damages against the appellants/ which was numbered as Regular Suit No. 81 of 2000 in respect of Gate No. 184 marked as Property Nos. 879, 879/1 to 879/44 over which, hospital alongwith the residence premises of the officers and doctors working in the Hospital were constructed. The aforesaid suit was decreed ex parte vide order dated 8.8.2005 passed by the learned Civil Judge (SD), Rae Bareli.

2. As soon as the appellants acquired knowledge with regard to the said decree in the aforesaid suit No. 81 of 2000 on 17.12.2005, which was decreed ex parte on 8.8.2005, they have preferred an application on 19.1.2006 under Order IX, Rule 13, C.P.C. alongwith an application u/s 151 of C.P.C. for setting aside the judgment and decree dated 8.8.2005. The said application under Order IX, Rule 13, C.P.C. could not be filed within the stipulated time and, as such, an application u/s 5 of the Limitation Act for condonation of delay duly supported by the affidavit has been preferred, wherein it has been stated that Sri Z.A. Khan, who was doing pairvi on behalf of the department have attained the age of superannuation and retired in the month of June, 2005 and thereafter the pairokar who has been asked to look after the legal matters was not aware about the pendency of the suit nor the advocate who has been appearing on behalf of

the department and, as such, the suit was dismissed as stated herein above. The application u/s 5 of the Limitation Act was rejected by the Trial Court on 24.9.2009, consequently, the application moved under Order IX, Rule 13, C.P.C. was also dismissed. Being aggrieved, the present appeal has been preferred.

3. Counsel for the appellants submits that it is a cardinal principle of law that the Court should decide the case on its merits rather than on the technicalities. The said principle has been reiterated in State of U. P. and others Vs. Harish Chandra and others, and State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, , wherein it has been emphasized that the Court should decide the case on merits rather than on technical grounds.

4. We have gone through the averments made in the affidavit filed in support of the application u/s 5 of the Limitation Act and are of the opinion that the delay has satisfactorily been explained. Accordingly, we set aside the order dated 24.9.2009 so passed on the application moved u/s 5 of the Limitation Act alongwith an application under Order IX, Rule 13, C.P.C. for setting aside the ex parte decree dated 8.8.2005 and direct the Trial Court to decide the application moved under Order IX, Rule 13 of C.P.C. expeditiously in accordance to law on merits. The appeal is allowed.