

(2006) 10 RAJ CK 0060
In the Rajasthan High Court

Subhash Chand Sharma

APPELLANT

Vs

Dileep

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17, Order 41 Rule 19

Citation : (2007) 3 RCR(Civil) 12 : (2007) 1 RCR(Rent) 567 : (2007) 1 RLW 555

Hon'ble Judges : Shiv Kumar Sharma, J; Chatra Ram Jat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Heard learned Counsel for the appellant.

2. The appellant seeks to set aside the order dated March 10, 2006 of the learned Single Judge, whereby restoration application submitted by the appellant was dismissed.

3. Contextual facts depict that against the order of learned Additional District Judge No. 3, Kota Civil Misc. Appeal No. 3407/2005 came to be filed by the appellant on November 28, 2005. On December 19, 2005 when the Civil Misc. Appeal was listed, the appellant and his counsel did not appear and the appeal was dismissed in default. The appellant moved an application seeking restoration of the appeal on January 3, 2006, but the learned Single Judge vide order March 10, 2006 dismissed the restoration application. Against this order of the learned Single Judge that the instant special appeal has been preferred by the appellant.

4. The appellate Court was to dismiss the appeal in default under Order XLI Rule 17 CPC on the ground of absence of the appellant and his counsel, but appeal once dismissed in default may be readmitted under Order XLI Rule 19 CPC. We think that justice oriented approach is required while deciding the application seeking restoration.

5. The Apex Court in Special Leave to Appeal Civil Appeal No. 872/2004 State v.

Khan allowed restoration of the petition by a brief order dated February 8, 2004, that reads as under:

High Court ought to have condoned the delay and restored the matter. High Court not having done so, we do it now.

6. Following ratio indicated by their Lordships of the Supreme Court in *State v. Sal Khan*, we allow the instant appeal and set aside the impugned order dated March 10, 2006. We restore the appeal to its original number. The matter may now be placed before the learned Single Judge.