
(2005) 12 MP CK 0036
In the Madhya Pradesh High Court
Case No : Writ Petition No. 15414 of 2005

Suraj Prasad Sahu

APPELLANT

Vs

Arjun Prasad

RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19
Court Fees Act, 1870 — Article 1A
Madhya Pradesh Land Revenue Code, 1959 — Section 43, 44
Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 — Section 18, 4, 8

Citation : (2006) ILR (MP) 330 : (2006) 1 MPHT 511 : (2006) 2 MPLJ 345

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Hemant Kumar Chouhan, for the Appellant; Vinod Mehta, Government Advocate, for the Respondent

Judgement

K.K. Lahoti, J.

Petitioner has filed this petition challenging order dated 11-11-2005 Additional Collector, Jabalpur in Case No. 19-B/121/2005, by which the petitioner's appeal u/s 8 of the M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter referred as "Adhiniyam" for short) was dismissed in default.

It is submitted by the petitioner that in the aforesaid Adhiniyam there is no provision for restoration of appeal, dismissed in default so the petitioner has approached to this Court by filing this petition. It is prayed that the impugned order passed by the Appellate Authority be quashed and the petitioner's appeal be directed to be heard on merits.

The facts of the case are that petitioner claiming himself to be the holder of an

agricultural land in weaker section, filed an application u/s 4 of the Adhiniyam for seeking relief under the Adhiniyam before the Sub Divisional Officer, Jabalpur, The petitioner's application was dismissed by the Sub Divisional Officer by order dated 14-7-2005. Against the aforesaid order the petitioner preferred an appeal u/s 8 of the Act, before the Collector, Jabalpur. The aforesaid appeal was transferred for adjudication to the Additional Collector, Jabalpur where the appeal was pending and was dismissed in default. It is stated that the petitioner was sitting outside the Court and the case was dismissed in default without any call. The Counsel also could not appear as the case was not called by the concerned authority. This order has been assailed by the petitioner on following grounds:--

(1) That the learned Additional Collector committed error in dismissing the appeal of the appellant in default, while there is no such provision to dismiss the appeal in default.

(2) The case was not called and without providing opportunity to the petitioner who was sitting outside the Court, the petitioner's appeal was dismissed in default.

(3) That there is sufficient cause to re-admit the appeal for hearing, in absence of which the appellant shall be deprived with Justice.

(4) As the matter has been dismissed in default of appearance of the petitioner before the Additional Collector, the remedy is available to the petitioner to approach before the same Court by filing an application for re-admission of the appeal. Under the Adhiniyam though there is no specific provision in respect of restoration of appeal dismissed in default, but the rules framed u/s 18 of the Adhiniyam, namely M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Niyam, 1978 (hereinafter referred as "Niyam" for short) provides that the rules made under the M.P. Land Revenue Code, 1959, so far as they relate to appeal shall apply to the appeal preferred u/s 8 as they apply to the appeal to the Collector under the said Code. For ready reference Niyam 8 reads thus :--

8. (1) The provisions of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) and the rules made thereunder so far as they relate to appeal shall apply to the appeal preferred u/s 8 as they apply to the appeal to the Collector under the said Code. (2) The memorandum of appeal u/s 8 shall be affixed with a Court Fee Stamp of the value specified in Article 1-A of Schedule 1 of the Court Fees Act, 1870 (No. VII of 1870).

The M.P. Land Revenue Code, 1959 provides appeal u/s 44 of the Code and the procedure is envisaged u/s 43 of the Code, which provides that unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908) shall, so far as may be, be followed in all proceedings under this Code. For ready reference Section 43 reads thus :--

43. CPC to apply when no express provision made in this Code.-- Unless

otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908) shall, so far as may be, be followed in all proceedings under this Code,

In view of the aforesaid, the procedure applicable in the appeal as envisaged under the CPC, shall be applicable to the appeals filed before the Collector. Under Order 41 Rule 19, CPC, there is provision for re-admission of appeal which is dismissed in default. The aforesaid provision shall apply to the appeals before the Collector and the Collector is having jurisdiction to readmit the appeal which is dismissed in default.

In the aforesaid circumstances, the petitioner may approach to the Additional Collector, Jabalpur before whom the petitioner's appeal was pending and was dismissed in default on 11-11-2005 and seeks readmission of appeal on showing sufficient cause of his absence on the date when the appeal was listed for hearing and dismissed in default.

With the aforesaid direction, this petition is finally disposed of. C.C. as per rules.