
(2003) 04 JH CK 0116
In the Jharkhand High Court
Case No : Civil Revision No. 352 of 2002

Tapan Kumar Mukherjee

APPELLANT

Vs

Paulus Soren and Others

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4, 115

Citation : (2003) 2 JCR 710

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Dhananjay Kr. Dubey, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the learned counsel appearing for the petitioner. No one appears on behalf of opposite parties. In spite of service of notice the opposite parties have not appeared, hence this Civil Revision Application is disposed of.

2. This revision application is directed against the order dated 7.8. 2002 passed by the Sub Judge IXth, Ranchi in Miscellaneous Case No. 3 of 1999 whereby he has rejected the Miscellaneous Case No. 3 of 1999 and refused to restore the Execution Case No. 2 of 1984.

3. It appears that the suit filed by the plaintiff-petitioner for eviction of the defendant was ultimately decreed ex parte. The decree was put in execution vide Execution Case No. 2 of 1984 which remained pending for so many years and during that period the file was transferred from one Court to another Court. Ultimately the case was dismissed on 21.9.1999 for non- prosecution. The petitioner decree holder filed an application under Order IX, Rule 4, CPC for restoration of the said Execution Case on the ground, inter alia, that neither the Advocate, nor the Advocate-Clerk were aware about the frequent transfer of the case from one Court to another Court and further that because of bonafide mistake, the case was left from the diary of the Lawyer's clerk.

4. It appears that in support of his case, the petitioner-decree holder examined witnesses. The Court below refused to restore the case mainly on the ground that the petitioner was careless and the cause shown is unsatisfactory.

5. Admittedly, the petitioner examined witnesses in support of the fact that the Execution Case was dismissed not because of the gross negligence of the petitioner but because of the bonafide mistake of the Lawyer and Lawyer's Clerk. Although the Execution Case remained pending from 1984 to 1999 but nothing has been said in the order about the reason of pendency of the Execution Case for such long years that is due to negligence of the petitioner. In that view of the matter, the Court below has not correctly appreciated the facts and law and passed the order on extraneous consideration. Moreover, the Court failed to consider that if the Execution Case is not restored, the petitioner would suffer substantial loss and serious injury inasmuch as the decree for eviction will become infructuous.

6. For the aforesaid reason this Civil Revision application is allowed and the impugned order is set aside. Consequently the Execution Case No. 2 of 1984 is restored.