
(2000) 02 AHC CK 0054

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10855 of 1982

Tarawanti and Others

APPELLANT

Vs

Additional Civil Judge, Ghaziabad and Others

RESPONDENT

Date of Decision : 19-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 17 Rule 3, Order 3 Rule 1, Order 3 Rule 2, Order 9 Rule 9

Citation : (2000) 02 AHC CK 0054

Hon'ble Judges : Sudhir Narain, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 23.7.1981 passed by respondent No.1 rejecting the application of the petitioners for restoration of the suit and the order of the appellate court, respondent No.2 dismissing the appeal against the aforesaid order.

2. The petitioners filed Suit No. 174 of 1978 for recovery of arrears of rent, ejectment and damages against the defendantrespondent No.3 and 4 with the allegations that they had let out a plot of land measuring 12"X20" to one Bhagat Ram on a monthly rent of Rs. 250/. They gave a notice to the tenant and to his partner Gyan Chand demanding arrears of rent and terminating his tenancy. Defendant Bhagat Ram contested the suit and asserted that the rate of rent was Rs. 50/ per month and not Rs.250/ per month as claimed by the plaintiffpetitioners.

3. The trial court had fixed 7.8.1980 for final hearing. The case was adjourned for 27.8.1980. On the said date, the petitioners did not attend the court and their counsel also did not appear in the Court. One Laxmi Narain, filed application in the Court with the allegations that the counsel was out of station and could not appear in the court. On the same day the court rejected the adjournment application with the reasons that the ground mentioned in the application was insufficient. Thereafter he proceeded with the suit and passed the following order:

?No evidence adduced by the parties. The suit is dismissed with costs for want of evidence. Sd/ 27.8.1980?

4. The petitioners filed an application for restoration of the suit under Order 9 Rule 9, CPC with the allegations that they could not appear in the court as they had to attend the marriage of one of the petitioners' daughter. They had, however, sent their Pairokar Lakshmi Narain to contact their counsel and instruct him to get the case adjourned. The counsel was out of station and in that circumstances, Lakshmi Narain moved an application before the Court for adjournment but that was rejected.

5. It was stated that the petitioners could not appear in the case in the facts and circumstances mentioned in the application. The trial court rejected the application on 23.7.1981 holding that as the suit was decided on merits under Order 17 Rule 3, CPC the application was not maintainable under Order 9 Rule 9, CPC. The petitioners filed appeal No. 124 of 1981. Respondent No. 2 has dismissed the appeal affirming the view taken by the trial court. These orders have been challenged in the present writ petition.

6. I have heard Sri A. D. Saunders, learned counsel for the petitioners.

7. The core question is as to whether the application under Order 9 Rule 9, CPC is maintainable on the facts and circumstances of the present case.

Under the explanation added to by Allahabad High Court, no party shall be deemed to have failed to appear if he is either present or represented in Court by agent or pleader, though engaged only for the purpose of making an application. The meaning of the word "appearing" has to be considered keeping in view of the provisions of Order 3 Rule 1, CPC which reads as under:

? 1. Appearances, etc., may be in person, by recognized agent or by pleader Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader on his behalf.?

8. The application for adjournment was filed by one Lakshmi Narain. He was only a Pairokar, Instructed by the petitioners to approach their counsel to get the case adjourned. He contacted the counsel for the petitioners but he was out of station. Lakshmi Narain, in these circumstances, filed an application before the court for adjournment on the ground that the petitioners' counsel is out of station. Admittedly, he was not authorised by the petitioners to act on their behalf in Court. Rule 2 of Order 3 provides that the recognized agents of parties by whom such appearances, applications and acts may be made or done are:

(a) persons holding powers of attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not

resident within the local limits of the jurisdiction of the Court within such limits the appearance, application or act is made or done, in matters connected with such trade or business.?

9. The petitioners had not executed any power of Attorney authorising Laxmi Narain to make appearance or filing any application in Court. He was instructed to contact their counsel for doing pairvi in the case. His appearance in the court and filing the application before the court for adjournment cannot be treated as appearance by the petitioners or their counsel. In *Fariduddin and others v. IInd Additional District Judge, Varanasi and others*, 1988 (2) ARC 327 it has been held that where a person alleging himself to be as Pairokar of a party, filed an application for adjournment and the same was rejected, it was held that the appearance of Pairokar cannot be treated as appearance of the party concerned for the purpose of Order 17 Rule 2, CPC.

10. The appearance of Laxmi Narain as Pairokar of the petitioners and filing application on their behalf cannot be treated as appearance of their authorised agent. The restoration application in these circumstances was maintainable.

11. The writ petition is allowed and the impugned orders dated 23.7.1981 and 3.5.1982 are hereby quashed. Respondent No.2 is directed to decide the application of the petitioners on merits.

(Petition allowed)