

(1974) 11 PAT CK 0011
In the Patna High Court
Case No : Civil Rev. No. 835 of 1972

Union of India

APPELLANT

Vs

Respondent: M/s. Rama Engineering Works (Motihari) Ltd.

RESPONDENT

Date of Decision : 29-11-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 9

Citation : (1974) PLJR 496

Hon'ble Judges : S. Anwar Ahmad, J

Bench : Single Bench

Advocate : P.K. Bose, for the Appellant; Subodh Kumar Sinha, for the Respondent

Judgement

S. Anwar Ahmad, J

1. This application arises out of an order passed by the learned Subordinate Judge setting aside the order of dismissal passed in Money Suit No. 92/14 of 1969/70 and restoring the suit to its original file. The case of the plaintiff-opposite party was that hajri was filed on 12.1.71 but his advocate, Shri Janeshwar Jha, had left for his home in the previous night without informing the opposite party or his Karpardaz. The opposite party attempted to engage another lawyer but before this could be done, the suit was called on and was dismissed. According to him, 12.1.71 was the date fixed for pairwi only and not for hearing of the suit. An application under Order 9, Rule 9, Code of Civil Procedure, was filed by the opposite party which was allowed and the suit was restored to its original file as stated above. The defendant has come up to this Court in revision.

2. The Court below came to the conclusion that the 12th of January, 1971, was the date fixed for hearing of the suit on merits and not for making pairwi as was the case of the opposite party and that this fact was apparent from the order sheet of the suit itself. The Court below further found that no instructions were given to Shri Janeshwar Jha, Advocate, and, therefore, he could not have been present on 12.1.71, when the case was called on for hearing. The further finding

of the Court below was that the opposite party had taken the case in a very light mood and on the date of dismissal (12.1.71) he came to Court at 1.30 P.M. The evidence of his witnesses (A. W's 1 and 3) further indicated that a bogus hajri had been filed. By filing a bogus hajri the opposite party played fraud on the petitioner and kept the Court in dark as to the real state of affairs. The ultimate finding of the Court below was that the suit was dismissed for the misdeeds of A.W.'s 1 and 3 and the opposite party should blame himself for placing reliance upon them. The submission of learned counsel is that as there is no finding of "sufficient cause" in the impugned order, it is fit to be set aside.

3. Admittedly, there is no finding of "sufficient cause" as required by Order 9, Rule 9, Code of Civil Procedure. It seems to me that unless the Court below came to the conclusion that "there was sufficient cause for non-appearance when the suit was called on for hearing", no order setting aside the dismissal could be passed. I am fortified in this view of mine by a large number of decisions of this Court and of the other High Courts, Vide (1) Surendra Kumar Singh and Others Vs. Mukund Lal Sahu and Others, , (2) Haridas Mukherjee Vs. Bijay Krishna Das and Others, , (3) Surujmal Keshan Vs. Baliram Prosad Shah and Others and (4) Debendra Nath Dutt Vs. Sm. Satyabala Dasi and Others, . All these decisions lay down that an application under Order 9, Rule 9 or 13, Code of Civil Procedure, cannot be allowed under the inherent powers of the Court. It was also laid down by the Full Bench of this Court in 5) Doma Choudhary and Others Vs. Ram Naresh Lal and Others, :

It may also be safely laid down that the Court has no inherent power to override express provisions of the Code.

Further, in the absence of some special circumstances which amount to abuse of the process of the Court, it cannot grant a relief in exercise of its inherent power when the ends of justice can be served by another remedy provided by the Code which is available.

To the same effect is the decision in (6) Baikunth Sahu Vs. Mohammad Sadique and Others, where-in it was laid down that where there is no question of any abuse of the process of the Court or any miscarriage of justice appearing on the face of the proceeding itself, an ex parte decree cannot be set aside in exercise of the Court's inherent powers u/s 151. The same law was laid down in (7) Ajodhya Mahton and Another Vs. Musammat Phul Kuer, . The same view was expressed by the Supreme Court in (8) Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, , (9) Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati, , (10) Ramkarandas Radhavallabh Vs. Bhagwandas Dwarkadas, , (11) Raja Soap Factory and Others Vs. S.P. Shantharaj and Others, and (12) Nain Singh Vs. Koonwarjee and Others, . It is thus clear that as the Court below did not come to a finding of sufficient cause in favour of the opposite party, it had no jurisdiction to set aside the ex parte decree.

In the result, the application is allowed and the order of the learned Subordinate

Judge is set aside. There will be no order for costs.