2024 INSC 1030

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024

(ARISING OUT OF SLP (C.) NO.11259 OF 2022)

DWARIKA PRASAD (D) THR. LRs. **...APPELLANTS**

VERSUS

PRITHVI RAJ SINGH **...RESPONDENT**

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.

2. This appeal assails the final judgement and order passed by Allahabad High Court in Writ Petition No.18990/2024 on 24.05.2022 whereby the High Court dismissed the Writ Petition and upheld the order of the District Judge, Etah in Civil Revision No.53 of 2000. The District Court, Etah ("Revisional Court") had allowed the Civil Revision filed by Respondent Prithvi Raj Singh under section 115 of Civil Procedure Code ("CPC")

against the order dated 29.04.2000 passed by Additional Civil Judge (Junior Division) Kasganj ("Trial Court") in Civil Miscellaneous Case No.33/1994. The Trial Court thereby had allowed the restoration application under Order IX Rule 13 and section 151 of CPC filed by the Appellant Dwarika Prasad. The High Court has effectively dismissed the restoration application, confirming the *ex parte* decree dated 11.04.1994 passed in favor of Respondent.

3. The facts leading to the present appeal are stated below:

3.1. Respondent-Plaintiff Prithviraj Singh instituted a civil suit registered as O.S. No.81 of 1988 seeking declaration of a sale deed as null and void on the ground of fraud played by the Appellant-defendant. Plaintiff averred that his grandfather Shri Guljari Lal was a bhumidhar with transferable rights of agricultural plot No. 315 area 0.66 Hectare, situated at Itwarpur, Pargana-Sahawar, District Etah and also of agricultural plot No.141 area 0.34 Hectare situated at Village

Bodha Nagria. In the name of providing treatment, Appellant-defendant Dwarika Prasad took the grandfather of plaintiff to Kasganj. On 16.01.1979 the appellant got a sale deed executed by his grandfather by way of fraud in his favour.

3.2. The Court of First Additional Munsif, Kasganj, Etah decreed the suit *ex parte* by order dated 11.04.1994 on account of non-appearance of defendant and declared the sale deed in question to be void and unenforceable.

3.3. The Appellant-defendant filed restoration application under Order IX Rule 13 and Section 151 of CPC on 31.10.1994. He stated that he was uneducated, naïve and old aged person unable to understand Court proceedings; he had put full faith in his previous counsel Shri Ramgopal Singh. However, on 26.10.1994 the Respondent and his brothers publicly said to the Appellant that they have got the sale deed cancelled and have also got the name of the Appellant removed. As suspicion

arose in the Appellant's mind, he appointed Shri Ashok Kumar Verma as his counsel who inspected the file in the Revenue Court, Kasganj. The Appellant was informed about the *ex parte* decree, on 27.10.1994. The Counsel for the Appellant found copy of the *ex parte* decree the next day on 28.10.1994. Accordingly, on 31.10.1994 the Appellant filed the restoration application. The Appellant stated in the application that his previous counsel Shri Ramgopal Singh played fraud over him as he conspired with Respondent.

4. The Trial Court allowed the restoration application and set aside the *ex parte* decree by order dated 29.04.2000. It found that the Appellant is illiterate and he has put thumb impressions wherever his counsel asked him to put. He was kept unaware of the legal proceedings by the previous counsel. Only after the revenue court rejected the proceedings initiated by the Appellant for mutation, the new counsel was appointed. As the new counsel came to know about the *ex parte* decree, the restoration application has been filed. The Trial Court

thus held that the Appellant cannot suffer due to errors of his counsel and it found it justifiable to provide full opportunity of hearing to the Appellant.

5. Thereafter on 10.05.2000, the Respondent filed Revision (Civil Revision No.51 of 2000) under section 115 of CPC against the order of the Trial Court dated 29.04.2000. Respondent claimed that the restoration application is time barred and the Appellant had knowledge of *ex parte* decree since beginning. The Additional District Judge at Etah allowed the Revision, holding that the Appellant did not move the application under section 5 of the Limitation Act, which is a mandatory requirement when the application under Order IX Rule 13 of CPC is filed after a considerable delay and such delay requires explanation. Thus, the District Court, by order dated 17.02.2004, held that the order of the Trial Court was in violation of mandatory provisions of law.

6. Aggrieved, the Appellant filed Writ Petition being Civil Miscellaneous Writ Petition No.18990 of 2004 against

the order of the District Judge dated 17.02.2004. The Appellant pleaded that the District Court has taken a hyper technical approach in dismissing the restoration. Further, he had clearly submitted in the restoration application that he came to know about the *ex parte* decree on 28.10.1994 and without further delay he filed restoration application on 31.10.1994. Thus, from the date of knowledge, the limitation for filing the application will start. There was no requirement of filing a separate application for condonation of delay as the restoration application itself was not time barred.

7. The High Court by the impugned order dated 24.05.2022, dismissed the Writ petition filed by the Appellant. The High Court has held that the limitation for filing application under Order IX Rule 13 CPC is 30 days and it starts running from the date of the decree. As the *ex parte* decree was passed on 11.04.1994, the limitation for filing the restoration application expired on 11.05.1994. However, the application was filed by the Appellant on 31.10.1994, which is about five months after expiry of the limitation. Since the

application was filed beyond time, it must be accompanied with an application under section 5 of the Limitation Act praying for condonation of delay. As no such application was filed by the Appellant, there was no proper application under Order IX Rule 13 of CPC in the eye of law. Thus, the High Court held that the Addl. District Judge was correct in allowing the Revision.

8. The Appellants preferred the Special Leave to Appeal before this Court against the order of the High Court. This Court has issued notice and granted six weeks' time to file the counter affidavit on 20.07.2022. The Respondent has not filed the counter affidavit till date. The counsel for Respondent had put in appearance, way back in October 2022. He was not present on multiple dates including the last date, when this matter was heard on 09.12.2024.

9. We have heard learned counsel for the appellant and perused the record. We are of the opinion that the High Court has erred in upholding the order of the Additional District Judge. The Trial Court had rightly allowed the

restoration application filed by the Appellant under Order IX Rule 13 of CPC. It is well settled that Courts should not shut out cases on mere technicalities but rather afford opportunity to both sides and thrash out the matter on merits. Further, we cannot let the party suffer due to negligent or fault committed by their counsel. This principle has been enunciated by this court in the case of ***Rafiq v. Munshilal***[1]**,** quoted as follows:

> **"3.** The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High

[1] (1981) 2 SCC 788

Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow

this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order….."

10. In the present case, the appellant has trusted his counsel to manage the suit proceedings. However, he was not made aware of the ex-parte decree by his previous counsel. It is only after the appointment of the new counsel, the appellant got to know about the ex-parte decree. Therefore, the Additional Sessions Judge ought not to have exercised the revisional jurisdiction in interfering with the order of the Trial Court where it had exercised its discretion in setting aside the ex-parte decree for justifiable reasons accepting the reasons given by the defendant-appellant.

11. The Appellant has relied upon the following judgments in support of his submissions. In ***Bhagmal and Ors Vs. Kunwar Lal and Others***[2] this Court held as follows;

"12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had

[2] 2010 (12) SCC 159.

clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that

> application. Procedure is after all handmaid of justice."

12. From the above cases, it is clear that there was no need to file a separate application for condonation of delay in the present case as well. The High Court has erred in taking a hyper technical view and concluding that there was violation of mandatory provision of law. Endorsing such a view would effectively mean ignoring the purpose of judicial procedure. The procedure cannot stand in the way of achieving just and fair outcome. In the present case, the Appellant acted *bona fide* and diligently. His conduct does not violate any rule of law.

13. In view of the above discussion, we allow this appeal, set aside the impugned order dated 24.05.2022 passed by High Court, and allow the writ petition and restore that of the Trial Court dated 29.04.2000. The Trial Court to proceed with O.S. No.81 of 1988 in accordance with law. As the suit is an old one, we further direct the Trial Court to expedite hearing of the suit and make an endeavour to decide the same within a year. It goes

without saying that parties to the suit shall extend all cooperation in disposal of the suit.

14. There shall be no order(s) at to costs.

.....J.
(VIKRAM NATH)

.....J.
(PRASANNA B. VARALE)

NEW DELHI
DECEMBER 20, 2024