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(1994) 05 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: C.M. No. 7714-CII of 1991 in Civil Revision No. 2348 of 1984

Smt. Satya Devi (Deceased)	APPELLANT
Vs	
M.L. Dogra and Others	RESPONDENT

Date of Decision: May 18, 1994

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 151

Citation: (1994) 107 PLR 716

Hon'ble Judges: N.K. Kapoor, J

Bench: Single Bench

Advocate: S.C. Kapoor and Ashish Kapoor, for the Appellant; M.L. Sarin and Hemant Sarin, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.K. Kapoor, J.
The present application has been filed to recall the order dated 4.4.1991 on the ground that the petitioner"s counsel Sh. B.L. Bishnoi had shifted to Delhi to practice in the Supreme Court and thus no assistance was rendered for and on behalf of the petitioner. Even the petitioner also had no knowledge of the date when the case was to be heard. It has further been stated that the petitioner met his counsel in the High Court where he had gone along with his relation and when enquired from his counsel was told that he did not know of the hearing since he has shifted. On subsequent enquiry, it was found that the petition was dismissed on 4.4.1991. In addition thereto, it has been stated that the case had not been clearly and correctly shown in the cause list. Even the name of the counsel was not clearly mentioned.

2. Respondents put in appearance, filed reply by way of affidavit of Sh. S.D. Bhanot. Besides taking some preliminary objections as to the maintainability of the petition,

limitation etc, factual averments made by the petitioner have also not been admitted as correct. Precisely put, it has been urged that, in fact, there were two petitioners, namely, Smt. Satya Devi and Sh. V.P. Sardana and thus the death of Smt. Satya Devi will not absolve Sh. V.P. Sardana, the other petitioner, of his careless attitude. Even otherwise, civil revision was decided on 4.4.1991. Smt. Satya Devi died on 28.4.1991. As regards maintainability, it has been stated that the revision petition was heard and decided on merits and thus there is no need to recall the earlier order.

3. The matter has remained pending fairly for a long time, sometime on account of non-availability of the counsel and sometimes on account of paucity of time of the Court. The matter though short, yet is being seriously contested. The case of the petitioner is that he had no knowledge of the pendency of the revision petition nor his counsel at any given time intimated him in this regard. He had all the time been thinking that as and when his case is fixed for final hearing, the counsel would inform him in this regard which, of course, has not happened in the present case. Not only this, even the counsel had no knowledge for the obvious reason as he had already shifted to Supreme Court at Delhi. In these circumstances, the counsel has urged that the petitioner has been deprived of a right of hearing which is essential for just decision of the case.

4. Learned counsel for the respondents has, however, contested the various submissions made by the counsel for the petitioner. It has been argued that there is no explanation on record as to why Sh. V.P. Sardana, co-petitioner of Smt. Satya Devi, did not keep track of the revision petition which was ordered to be heard at an early date at his instance. In addition thereto, there is no clear averment in the application as to when Sh. B.L. Bishnoi shifted to Supreme Court. No affidavit of Sh. B.L. Bishnoi had been placed on record. Even if it be taken that Sh. B.L. Bishnoi had already shifted, the petitioner, in fact, had two other counsel, namely, Sh. Surinder Bishnoi and Sh. P.C. Chaudhary, Advocates. This way any of these two counsel ought to have taken care of the pending revision petition. Lastly, it was urged that the petition was heard and decided on merit and thus no case is made out for reviewer the earlier order. Accordingly, it was prayed that the present petition merits dismissal being devoid of any merit.

5. I have heard learned counsel for the parties and perused the review petition and the affidavit of Sh. S.D. Bhanot. There is no denying the fact that none appeared for the petitioner on 4.4.1991 when the same was decided. This was shown at serial No. 13 as per cause list dated 18.3.1991. A mere look at the entry reveals that though the civil revision has been correctly mentioned, parties name as well as counsel name, in fact, do not tally. Parties name read as Smt. Satya Devi v. H.L. Dogra and counsel names are B.L. Sihani, B.L. Daur and Ramesh Garg. One cannot lose sight of the fact that as per practice prevalent in the High Court, the case listed is normally checked by the Clerk of the counsel and marked who thereafter draws a list and bring it to the notice of the concerned counsel. The affidavit of the Clerk of Sh. B.L. Bishnoi could have thrown some light on this aspect of the matter. It appears that the counsel shifted to Supreme Court at Delhi and there was none else who was looking after the pending cases of Sh. B.L.

Bishnoi, Advocate. In this way the petitioner has certainly been prejudiced. Even when the case was put up for pronouncement of judgment on 4.4.1991 the parties name was not correctly shown. This time it was shown as Satya Devi v. M.C. Dogra and counsel Sh. H.L. Sarin and Sh. M.L. Sarin.

6. Courts have been taking very liberal view on such like matter especially when fault lies with the counsel and not with the litigant. The apex Court in case reported as Rafiq and Another Vs. Munshilal and Another, , in somewhat similar proposition has observed as under:-

"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 Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watch-dog of the advocate that the latter appears in the matter when it is listed. It is no part of his job..."

7. This Court in case reported as Rajinder Singh v. Jasvir Singh and Anr. 1989 PLJ 154, has also held that in case of negligence injustice is not to be perpetuated. A party should have a fair opportunity of hearing and costs can be imposed for negligence. Costs is panacea for the lapse committed by the petitioner.

8. Thus in the totality of the circumstance and the fact that the petitioner had no opportunity to place his view point, I recall my earlier order dated 4.4.1991 and restore the civil revision to its original number.

9. Since I have already expressed my opinion with regard to the merit of the revision petition, it would be appropriate if the same is listed before another Bench.