

(1997) 07 AHC CK 0092

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 7922 of 1992

Lt.Col.(Retd.) Ashok Kumar

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision: July 14, 1997

Hon'ble Judges: D.S.Sinha, J and R.K.Singh, J

Final Decision: Dismissed

Judgement

1. By means of instant application Lt. Col. Ashok Kumar (Retd.), Advocate and petitioner, prays that the order dated 14th July, 1997 be recalled, petition be restored and be taken up on Board for disposal. The prayer is vehemently opposed by the respondents.

2. The order dated 14th July, 1997, sought to be recalled, runs as follows:

"Hon"ble D.S. Singh, J. Hon"ble R.K. Singh, J.

Shri Ashok Kumar, the petitioner and Shri Sushil Harkauli, learned Counsel representing the respondents No. 1 and 2, are present.

This writ petition was filed in this Court on 21st February, 1992 and came up before the Court for consideration on 24th February, 1992. The case was called out thrice. The petitioner was not present. Therefore, the Court directed the case to be listed for admission on 6th April, 1992.

Thereafter, the matter came up on 25th August, 1993, but the case was adjourned on the illness slip sent by the petitioner praying for adjournment of the case.

On 2nd November, 1993, when the case was came up before the Court, the petitioner got the case adjourned. Again, on 17th January, 1994, the petitioner prayed for adjournment of the case and the case was adjourned. On 3rd March, 1994 also the case was passed over at the request of the petitioner. 20th September, 1996 is another date on which the case was passed over by the Court on the illness slip of the petitioner, praying for adjournment of the case. On 13th December, 1996

the Court once again accommodated the petitioner by adjourning the case on his request based on the plea that he had to undergo cataract operation. Then comes 7th January, 1997 when the case was again adjourned on the illness slip of the petitioner.

On 17th April, 1997 the petitioner obtained the adjournment of the case on the pretext of filing another set of paperbook, which he ought to have filed much earlier. Further, on 5th May, 1997 also the case was adjourned on the request of the petitioner. The case came up on 22nd May, 1997. The petitioner appeared and prayed for adjournment of the case. The Court obliged him. Thus, it is amply borne out that the Court has been granting indulgence to the petitioner by accepting his prayer for adjournment repeatedly, considering the fact that he was appearing in person. It is apposite to note that the petitioner, who is a retired Lieutenant Colonel, was a member of disciplined force. This apart, he is also an advocate practicing in this Court. Therefore, the Court is not unjustified in expecting from him a responsible behaviour and cooperation.

Today, when the Court was convened for its prelunch session at 10 a.m., the petitioner cum advocate appeared and made a prayer for adjournment of the case, as usual, on the ground that he had some professional assignment to look after. He was reminded of the fact that he had already availed the indulgence of the Court many times and was told that his prayer for adjournment of the case would not be entertained. He was further told that, at best, the case could be passed over once and would be taken up on revision of the causelist. Thereupon, the petitioner went away. The Court presumed that he would turn up to attend the case when it was taken up on revision of the causelist. On revision of the causelist, the petitioner did not turn up and the case was passed over once again.

The case has been called out for the third time. At this stage, the petitioner appears and insists that the case be adjourned. The Court declines to accept his request and calls upon him to proceed with the hearing of the case. But, the petitioner staves that he would not do so and exhorts the Court to do whatever it deems proper. Thus, the Court is left with no option but to dismiss the case for want of prosecution. Accordingly, the petition is dismissed for want of prosecution.

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3. The petitioner cum Advocate and Shri Sushil Harkauli, learned Counsel appearing for the respondents, have been heard at length and in detail.

4. The Court has very carefully scanned and scrutinised the cluttered and irrelevant pleas set up in the application and pleaded during the course of arguments advanced by the petitioner cum Advocate and has not been able to find any ground much less sufficient and cogent to recall the order dated 14th July, 1997.

5. To buttress his plea for recall of the order dated 14th July, 1997, the petitioner cum advocate cited and placed reliance upon the following decisions:

(a) AIR 1996 Supreme Court 2439. Bani Singh and others v. State of U.P

(b) AIR 1987 Supreme Court 1628. Radheyshyam Dube v. The District Inspector of Schools and others,

(c) 1978 All. Rent Cases 496. Ramji Dass and others v. Mohan Singh,

(d) AIR 1997 Allahabad 291. Mis, Brij Mohan Rice Mill v. Regional Manager U.P. Financial Corporation and another.

(e) AIR 1970 Allahabad 257 (F.B.) Seth Munna Lal Seth Jai Prakash,

6. Upon careful consideration of the decision cited and relied upon by the petitioner cum Advocate, the Court is of the opinion that in the backdrop of the facts and circumstances noticed in the order sought to be recalled and reproduced above none of the decisions comes to his rescue. Indeed, reliance upon the decision is misconceived and misplaced in as much as the dictum laid down therein have no application to the facts and circumstances noticed in the order dated 14th July, 1997 which speak for themselves. No more comment is warranted to justify the refusal of the prayer for recalling the said order.

7. In the result, the application fails and is hereby rejected.