

(2001) 09 JH CK 0014

Jharkhand High Court

Case No: MJC No. 448 of 2001

Mostt. Karuna and Others

APPELLANT

Vs

Ram Kishun Ram and Others

RESPONDENT

Date of Decision: Sept. 3, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11

Hon'ble Judges: Gurusharan Sharma, J

Bench: Single Bench

Advocate: R. Krishna, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Gursharan Sharma, J.

Heard. On 11.1.2001 nobody appeared on behalf of appellants in SA No. 72 of 2000 (2) and, therefore, stay petition was rejected as not pressed. Subsequently on the request of counsel for appellants, the appeal was directed to be listed for hearing under Order XLI, Rule 11 of the Code of Civil Procedure. On 30.3.2001 when the appeal was called out for hearing under Order XLI, Rule 11 nobody appeared on behalf of appellants to press the appeal and it was, accordingly, dismissed. In paragraph 6 of the present restoration application, which was filed on 1.6.2001, it has been stated that Mr. R. Krishna, counsel for appellants on 30.3.2001 was arguing the case in Court No. 4 and, therefore, he could not reach and on account of his failure to attend the case, the appeal was dismissed. It has further been stated that name of the counsel was also not printed and so the case was not marked. It is not disputed that on 30.3.2001 was a Friday and so in the daily cause list only serial number of the case was printed and case number, names of parties and their respective counsel were printed in the weekly cause list. Further, there is no explanation that if, in fact, by the time learned counsel reached, the was already

dismissed for default then either it ought to have been mentioned before the court or on the very next day an application for restoration should have been filed. As the appeal was dismissed for default on the part of counsel, in support of the fact stated in restoration application, the appellants were not required to a swear affidavit so there is no reason to file the present restoration application after a long delay of two months, which is also barred by time. This Restoration application is dismissed accordingly.

2. Restoration application dismissed.