

(2018) 05 JH CK 0045

Jharkhand High Court

Case No: Civil Revision No.29 of 2016

Vidya Pandey

APPELLANT

Vs

Vikash Kumar Tiwari

RESPONDENT

Date of Decision: May 11, 2018

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 9 Rule 4, Section 151
- Limitation Act, 1963 - Section 5

Hon'ble Judges: AMITAV K. GUPTA, J

Bench: Single Bench

Advocate: Kundan Kr. Ambastha

Final Decision: Dismissed

Judgement

1. This revision is directed against the order dated 10.03.2016, passed by the Civil Judge II, Palamau at Daltonganj in Misc. Case No.12 of 2011,

whereby an application under Order IX Rule 4 read with Section 151 of the Code of Civil Procedure, for restoration of Title Suit No.28 of 2007, was

allowed.

2. Learned counsel for the petitioner has assailed the impugned order on the ground that the court below has committed manifest error in not

appreciating and considering the fact that plaintiff did not appear on the date fixed and the trial court had rightly dismissed the suit by order dated

30.08.2010. It is submitted that the plaintiff's plea that he was suffering from illness due to which he could not prosecute the case is false because he

did not examine the doctor who had issued the medical certificate and the court below has committed a manifest error in not appreciating this

aspect that the plaintiff has produced a false and bogus medical certificate

3. On repeated calls, none appears on behalf of the opposite parties.

4. Heard. It transpires that the plaintiff (O.P in the present revision) had instituted Title Suit. No.28 of 2007 against the petitioners (defendants). The

aforesaid suit was dismissed by the trial court vide order dated 30.08.2010 for non-compliance of previous order. The O.P. (Plaintiff) filed the

application under Order IX Rule 4 read with Section 151 of the Code of Civil Procedure along with an application under Section 5 of the Limitation

Act, for condonation of delay in filing the restoration application. Both the parties had appeared and adduced the evidence. The court below has

exhaustively considered the evidence of both the parties and ordered for restoration of T.S. No.28 of 2007 subject to payment of cost of Rs.4000/-

It is well settled proposition that the word "sufficient cause" appearing in Rule 4 of Order IX, Civil Procedure Code, should be liberally construed

and interpreted with an object and purpose to do substantial justice when no negligence nor inaction nor want of bonafide is imputable to the party and

not to the cause of technicalities. "Sufficient cause" must be cause which is beyond the control of the party and will depend upon the facts and

circumstances of a particular case. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally

the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds

or arbitrary or perverse.

In this case reason for absence is 'illness' of the plaintiff. Merely because the doctor has not been examined, it should not lead to an inference that the

plaintiff's plea is false especially when evidence has been adduced by the parties.

On perusal of the impugned order it is evident that the trial court has recorded its findings on the basis of the evidence on record that the plaintiff's

absence was due to circumstances beyond his control, therefore, sufficient cause has been made out accordingly order for restoration of the suit

with cost to be paid by plaintiff for the inconvenience caused to defendants has been passed. In view of the discussions and reasons assigned, the

impugned order does not merit any interference by this Court.

5. Consequently, the revision is, hereby, dismissed. However, the impugned order dated 10.03.2016, is modified to the extent that the plaintiff shall pay a cost of Rs.10,000/- (Rupees ten thousand) instead of Rs.4,000/- to the defendant (petitioner) in the court below. The court below shall ensure that no unnecessary adjournment is sought for or granted and shall dispose off the suit at the earliest from the date of receipt or communication of a copy of this order.

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