

Civil Revision
PRESENT:
THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE
C.O. NO. 768 OF 2009
Raghunath Tibrewal
Vs.
Ajit Kumar Roy
JUDGMENT ON: 04.02.2010

Point:

INHERENT POWER: No intentional laches on the part of the defendant- Adjournment was sought for on the ground of effecting compromise- Whether the Id. Court below was justified in rejecting the petition under Section 151 of the Code of Civil Procedure- Code of Civil Procedure, 1908 S. 151.

Fact: By filing this application the petitioner has assailed two orders passed by the Id. Civil Judge (Junior Division), Sealdah in connection with a suit for Ejectment instituted against him by the plaintiff/O.P. The suit was fixed for tendering affidavit-in-chief of the defendant (D.W. 1). On January 28, 2009 the defendant reached the Court at 11.05 A.M. when he found that at about 11.00 A.M. the learned Judge of the Court below closed the evidence of the defendant and fixed a date for argument. Immediately thereafter the defendant filed a petition under Section 151 of the Code of Civil Procedure praying for recalling the order closing the evidence of the defendant. The learned Judge of the Court below on hearing both sides was pleased to reject the petition under Section 151 of the Code of Civil Procedure.

Held:

The defendant filed petition for adjournment on the ground of compromise between the parties and no objection was raised from the other side. As such, the learned Court below fixed another date for filing compromise petition. Here in the instant case there was no intentional laches on the part

of the defendant and, moreover, the contention that the adjournment was sought for on the ground of effecting compromise, finds corroboration from the order No. 27 dated 25.8.2008. Having regard to the circumstances aforesaid the learned Court below was not justified in rejecting the petition under Section 151 of the Code of Civil Procedure filed by the defendant. (Paragraphs – 5, 6 & 7)

Cases: (2001) 9 SCC 117 [Kewal Krishan Vs. Harnek Singh (Dead) by LRS.], (2009)2 SCC 198 [B.P. Moideen Sevamander and another Vs. A. M. Kutty Hassan], 2009(7) Supreme 357 [Monohar Singh Vs. D. S. Sharma & Anr.].

For the petitioner: Mr. Probal Mukherjee.
 Mr. Suhrid Chakraborty

For the O.P.: Mr. Sivo Prasad Ghosh
 Mr. S. Chakraborty

The Court:

1. This is an application under Article 227 of the Constitution of India assailing the order No. 30 dated January 28, 2009 and order No. 32 dated February 18, 2009 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah in Ejectment case No. 30 of 2005.
2. The case of the defendant/petitioner herein is that a suit for Ejectment was instituted against him by the plaintiff/O.P. herein in the learned Court below. The suit was fixed for tendering affidavit-in-chief of the defendant (D.W. 1). On January 28, 2009 the defendant reached the Court at 11.05 A.M. when he found that at about 11.00 A.M. the learned Judge

of the Court below closed the evidence of the defendant and fixed a date for argument. Immediately thereafter the defendant filed a petition under Section 151 of the Code of Civil Procedure praying for recalling the order closing the evidence of the defendant. The learned Judge of the Court below on hearing both sides was pleased to reject the petition under Section 151 of the Code of Civil Procedure.

3. The learned Counsel appearing for the petitioner herein submits that due to traffic jam the defendant could not reach the Court and immediately after the order was passed by the learned Court below, the defendant filed an application under Section 151 of the Code of Civil Procedure praying for recalling that order. The learned Counsel submits that it was the circumstance beyond control and in this connection the learned Counsel has referred to and cited the decisions reported in *(2001) 9 SCC 117 [Kewal Krishan Vs. Harnek Singh (Dead) by LRS.] and (2009)2 SCC 198 [B.P. Moideen Sevamander and another Vs. A. M. Kutty Hassan]*. It is contended that the past conduct of the defendant as referred to by the learned Judge of the Court below cannot be taken into consideration and, in such a case, for the ends of justice another chance should be given to the defendant to file affidavit-in-chief within a specified time.
4. The learned Counsel appearing for the O.P. herein submits that the defendant took several times to file affidavit-in-chief and also did not pay the costs as awarded by the learned Court below. The learned Counsel has referred to and cited the decision reported in *2009(7) Supreme 357 [Monohar Singh Vs. D. S. Sharma & Anr.]*.
5. It is contended in the application under Article 227 of the Constitution of India that since a talk of compromise was going on by and between the parties, the said affidavit-in-chief of the D.W. 1 could not be filed previously. On perusal of the order No. 27 dated 25.8.2008 of

the learned Court below I find that the defendant filed petition for adjournment on the ground of compromise between the parties and no objection was raised from the other side.

As such, the learned Court below fixed another date for filing compromise petition.

6. In the case of Monohar Singh Vs. D.S. Sharma and another (Supra) the facts were different. In that case the suit was dismissed for non-payment of costs and it was held that non-payment on costs resulted in forfeiture of the right to further prosecute the suit or defence as the case may be. But here in the instant case there was no intentional laches on the part of the defendant and, moreover, the contention that the adjournment was sought for on the ground of effecting compromise, finds corroboration from the order No. 27 dated 25.8.2008. The decision cited above, therefore, does not come in the aid of the contention raised by the learned Counsel for the O.P.
7. Having regard to the circumstances aforesaid, I find that the learned Court below was not justified in rejecting the petition under Section 151 of the Code of Civil Procedure filed by the defendant. The orders impugned are set aside. The application under Section 151 of the Code of Civil Procedure is allowed. The defendant/petitioner herein is directed to file affidavit-in-chief before the learned Court below within two weeks from the date of communication of this order upon payment of the costs of Rs.400/- (Rupees Four hundred only) to the plaintiff/O.P. herein.
8. The application under Article 227 of the Constitution of India is allowed. The interim order is vacated.
9. Let a copy of this order be sent to the learned Court below immediately.
10. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)