

Kaviraj Rai vs Sheo Darshan Dass And Ors. on 23 January, 1952

Equivalent citations: AIR1953ALL368, AIR 1953 ALLAHABAD 368

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. This is an application in revision against an order of the Civil Judge Basti, re-admitting an appeal against the applicant.
2. The appeal was dismissed in default on 16-2-1948. Application for re-admitting it was made on 21-3-1948.
3. It was alleged in the application and was supported by an affidavit that the appellant opposite party waited till late in the day on 17-12-1947 to know the next date fixed for the hearing, that no date was fixed and he went away, leaving instructions with his counsel's clerk to inform the date to be fixed in the case, that he did not know that the appeal was fixed for hearing on the 16th February and that he learnt about the dismissal of the appeal on 27-3-1946. He further alleged in the application that he was told by the clerk, that a post-card had been sent to him communicating the date of hearing, but that he did not receive it. The respondent applicant objected to the re-admission of the appeal, stating in the objection that the reasons mentioned in the application were baseless and that the application was filed beyond time.
4. The learned Civil Judge considered the defendant's allegations about his not learning the next date fixed on the 17th December to be probable. Due to the local practice and the contents of the Hindi order-sheet for 17th December, he was also of opinion that the next date was not fixed in the presence of the appellant's counsel. I have looked up the order-sheet, and it appears that the date 16th February was filled in the blank left after the entire order had been written. When the blank was filled cannot be said. I, therefore, agree with his finding that the 16th February was not fixed in the presence of the appellant or his counsel.
4. There is nothing on the record to show that the counsel for the appellant opposite party knew that the appeal was fixed for the 16th February. The order-sheet of the 17th December does not bear his signature. The record of the appeal does not appear to contain any slip communicating the date to him. His counsel appears to have been called in Court on the 16th February. He then stated that he had no instructions. I am not prepared to conclude from this merely that the counsel must have

known the date of hearing and that if he had not known it, he must have stated to that effect. It was stated in the application of the appellant opposite party that the counsel's clerk told him on the 29th March that a post-card had been sent to him intimating the date of hearing. How far that statement of the clerk is true cannot be said. The fact remains that the appellant opposite party stated on oath in the affidavit that he did not know from any communication from his counsel or his clerk that the appeal was fixed for hearing on the 16th February. The appellant opposite party cannot be held to have known that the appeal was fixed for the 16th February for hearing. It cannot be said, therefore, that the appellant did not appear when the appeal was called on for hearing on the date fixed or on the date to which the hearing had been adjourned. I am, therefore, of the opinion that the appeal was not dismissed under the provisions of Order 41, Rule 17, sub-r. (1), Civil P. C., or for want of prosecution. It follows, therefore, that the thirty days' period of limitation prescribed under Article 168, Limitation Act, would not apply to the application for the re-admission of this appeal by the appellant opposite party. The order under revision, therefore, cannot be said to be bad on the ground that it was passed on an application for re-admission filed beyond limitation.

5. I, therefore, reject this application. In the circumstances of the case, I order the parties to bear their own costs.