

Rooplal Mehta v. Dhan Singh. etc. (Capoor, J.)

had jurisdiction under sections 100 and 101 of the 1951 Act, and it must be held that there has been implied modification of section 30 of the 1950 Act.

I would, therefore hold for the reasons already given that the question posed in the opening part of this judgment and on which the opinion of the Full Bench has been invited, must be answered in the negative.

A. N. GROVER, J.—I agree.

HARBANS SINGH, J.—I also agree.

B. R. T.

LETTERS PATENT APPEAL

Before S. B. Capoor, A.CJ., and R. S. Narula, J:

RAMA VANTI,—*Appellant*

versus

BAL KAUR,—*Respondent*

L.P.A. No. 39 of 1966.

August 1st, 1967

Letters Patent—Clause X—Discretion exercised by Single Judge—When can be interfered with—Code of Civil Procedure (Act V of 1908)—Order 41 Rule 19—Appeal dismissed under rule 11(2) or 17 or 18 of Order 41—When can be readmitted—High Court Rules and Orders—Volume V—Chapter 3-A, Rule 8—Parties not represented by counsel—Notice sent by registered post to appellant on an address different from that given in the memorandum of appeal and not served—Whether sufficient service.

Held, that in Letters Patent Appeal interference with the exercise of discretion by a Single Judge should not be resorted to unless the discretion is found to have been exercised arbitrarily.

Held, that under Order 41 Rule 19 of the Code of Civil Procedure, 1908, as soon as the Court is satisfied that an appellant was prevented by any sufficient cause from appearing in Court when his/her appeal was called on for hearing, the Court is bound to re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Held, that it is the duty of the Registry of the High Court under rule 8 of Chapter 3-A of Volume V of the Rules and Orders of the High Court to issue notices to parties who are not represented by counsel by registered A.D. post and to send the same "to an address as given by the appellant in the memorandum of appeal". It is the posting of only a postcard which is deemed to be sufficient intimation to the party of the date fixed in the case. If it is ordered by the Court that actual date notice of the hearing of the appeal be served on the appellant, the appeal cannot be dismissed in default till such notice is served on him. A notice sent to the appellant by registered post on an address different from that given in the memorandum cannot be held to be sufficient service if the notice did not reach him.

Letters Patent Appeal under Clause X of the Letters Patent, against the order of the Hon'ble Mr. Justice D. K. Mahajan, dated 14th January, 1966, dismissing the petition for restoration of E.F.A. No. 358 of 1963.

L. M. SURI, ADVOCATE, for the Appellant.

RAM RANG, ADVOCATE, for the Respondent.

JUDGMENT

NARULA, J.—This appeal under clause 10 of Letters Patent is directed against the order of a learned Single Judge, dated January 14, 1966, dismissing *in limine* an application of the appellant under Order 41 Rule 19 of the Code of Civil Procedure for restoration of her Execution First Appeal No. 358 of 1963, filed by her through Shri Durga Dass Khanna who was at that time practising as an Advocate of this Court. The appeal was admitted on October 21, 1963. When it reached for final hearing on August 5, 1965, it was found that the appellant was not represented, as her counsel had in the meantime been appointed as Chairman of the Punjab Legislative Council. Gurdev Singh, J., before whom the appeal had been listed, therefore, directed that a notice for an actual date be issued to the appellant to appear and prosecute the appeal. Though the appellant had given her address not only in the memorandum of parties filed with the execution first appeal, but throughout this litigation as that of 2/7 West Patel Nagar, New Delhi, the A. D. notice postcard was addressed to her at R-102, West Patel Nagar, New Delhi. The postcard, dated August 12, 1965, which was issued for the actual date hearing fixed for September 17, 1965, was received back undelivered to the addressee. When the case came up for hearing before Gurdev Singh, J., again on September 30, 1965, in the above situation, the above-said notice had not yet come back

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and the case was, therefore, adjourned to October 11, 1965, for enquiry from the postal department. It was further directed by the learned Judge that in the meantime a fresh notice for that date may be issued to the appellant by registered post. Unfortunately, however, the fresh notice was again issued to an address which reads as R-102, West Patel Nagar, New Delhi, which was admittedly never the address of the appellant. The case having been listed for hearing on October 11, 1965, actually reached hearing on October 15, 1965, before Mahajan, J. Since no one appeared for the appellant, the appeal was dismissed by the learned Judge for default of appearance without any order as to costs in the presence of the counsel for the respondent.

According to the appellant, she happened to come to Chandigarh on November 12, 1965, and on enquiry came to know that her appeal had been dismissed in default. Thereupon she filed Civil Miscellaneous 2295-C of 1965, on November 15, 1965, under Order 41 Rule 19 of the Code of Civil Procedure for readmission of the appeal. In the application which was duly supported by the affidavit of the appellant, she had stated that the appeal had been put up for hearing without any of the notices ordered by Gurdev Singh, J., having been served on her and that the notices issued by the Office of this Court had been sent to a wrong address, as would be evident from the addresses given on the notices compared with the address of the appellant given on the memorandum of parties in the execution first appeal. The Single Judge of this Court before whom this application came up for hearing dismissed the same *in limine* by order, dated January 14, 1966. Aggrieved by the same, the appellant has preferred this appeal.

In the application for readmission of the appeal, the correct address of the appellant had not been quoted. Nor had the address at which the two notices were issued to the appellant been mentioned. The difference between the two addresses does not appear to have been brought to the notice of the learned Judge.

This appeal has been contested by the respondent. Her learned counsel Shri Ram Rang has not been able to question any of the facts stated above, but has merely argued on the authority of the Lahore High Court in the *Hanuman Chamber of Commerce Ltd., Delhi v. Messrs R. B. Seth Jassa Ram-Hira Nand* (1), that in a Letters Patent appeal interference with the exercise of discretion by

(1) 1947 P.L.R. 230.

a learned Single Judge should not be resorted to unless the discretion is found to have been exercised arbitrarily. Counsel is no doubt right in his submission, but the argument has no application to the present case as rule 19 of Order 41 of the Code, which is quoted below, does not vest any discretion in a Court:—

“Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 or rule 18, the appellant may apply to the Appellate Court for the readmission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.”

As soon as the Court is satisfied that an appellant was prevented by any sufficient cause from appearing in Court when his/her appeal was called on for hearing, the Court is bound to readmit the appeal on such terms as to costs or otherwise as it thinks fit. There is, therefore, no question of exercise of any discretion by the learned Single Judge in this case. From a perusal of the above-said record which does not appear to have been placed before the learned Single Judge, we are satisfied that the appellant was prevented by sufficient cause from appearing when her execution first appeal was called for hearing on October 15, 1965. It is the duty of the Registry of the Court (*vide* rule 8 of Chapter 3-A of Volume V of the Rules and Orders of this Court) to issue notices to parties who are not represented by counsel by registered A.D. post and to send the same “to an address as given by the appellant in the memorandum of appeal”. It is the posting of only such a postcard which is deemed to be sufficient intimation to the party of the date fixed in the case. The first proviso to rule 8 referred to above is in the following terms:—

“Provided that intimation of the *pacca* date fixed in a case will be sent by registered postcard (A.D.) to such parties as are not represented by counsel. Such postcard shall be sent to an address to be given by the party in response to the original notice of appeal calling upon him to furnish an address for service for the purposes of the appeal, or if he fails to give such address within one month of

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the service of such notice of appeal, to his address as given by the appellant in the memorandum of appeal. The posting of such postcard shall be deemed to be sufficient intimation to the party of the date fixed in the case."

Since it is the common case of the parties that the appellant's counsel Shri D. D. Khanna had left the profession by the time the execution first appeal came up for hearing and since it had been ordered by the learned Single Judge that actual date notice of the hearing of her appeal may be served on the appellant, the appeal could not be dismissed in default till such notice was served on her. In these circumstances, we allow this appeal, set aside the order of the dismissal of the appellant's application under Order 41 Rule 19 of the Code of Civil Procedure and readmit Execution First-Appeal No. 358 of 1963, and further direct that the same may be listed for hearing before any Single Bench on August 21, 1967. In the circumstances of the case, there is no order as to costs of this appeal.

S. B. CAPOOR, A.C.J.—I agree.

R.N.M.

LETTERS PATENT APPEAL

Before S. B. Kapoor, A.C.J., and R. S. Narula, J.

THAMBU AND OTHERS,—*Appellants*

versus

ADDITIONAL DIRECTOR, CONSOLIDATION OF HOLDINGS, HISSAR

AND OTHERS,—*Respondents*

L.P.A. No. 368 of 1966

September 13, 1967

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—East Punjab Holdings (Consolidation and Prevention of