

Goswami Krishna Murarilal Sharma

Vs

Dhan Prakash and Others

Civil Appeal No. 755 of 1980

(D.A. Desai, Baharul Islam JJ)

07.08.1981

ORDER

DESAI, J. –

1. Special Leave granted.

2. With the consent of the parties, we decided to dispose of the appeal by a speaking order. The appellant-defendant filed first appeal No. 286 of 1961 in the High Court of Judicature at Allahabad against the judgment and decree of the learned Additional District Judge, Meerut by which the suit of the plaintiff-respondent was decreed declaring that the house involved in the appeal is a public temple and the shop involved in the dispute in the suit was property of the public trust. A further declaration was given that the defendants were not suitable persons to be trustees of public trust and therefore a scheme for the administration of the public trust be prepared and new trustees be appointed.

3. When this appeal, preferred by the appellant in the High Court came up for hearing, Shri Banerjee learned counsel for the appellant stated that he had no further instructions in the matter and sought leave to withdraw from the case and on being so permitted he withdrew and then the Court proceeded to dismiss the appeal for failure of the appellant to appear and prosecute the appeal.

4. From a short cryptic Order of the High Court, it is difficult to call out why Shri Banerjee, learned Advocate, who appeared for the appellant sought leave to withdraw at the last minute and that too in the absence of the appellant. Assuming, if Mr. Banerjee made out cogent reasons for withdrawal, it is difficult to appreciate how while granting the request of Mr. Banerjee and recording his withdrawal from appeal, the Court straight away proceeded to dismiss the appeal for failure of the appellant to appear and to prosecute the appeal. It appears that thereafter the appellant filed an application for restoring the appeal by recalling the order dismissing it for the failure of the appellant to appear and prosecute the appeal.

5. The appellant made another application for restoring the appeal and hearing it on merits. The same was dismissed on April 23, 1979.

6. It appears that the appellant had engaged his advocate and at the hearing of the appeal ordinarily the presence of the parties is generally redundant. Learned Advocate appearing on either side is heard by the Court and the arguments are directed with reference to the trial court's record. Ordinarily, the personal presence of the parties is not even insisted upon at the hearing of the appeal.

7. Now, the appellant had engaged his advocate who withdrew, the reasons for withdrawal being known only to the learned Advocate and not ascertainable from the record. It is difficult to appreciate how the Court straight away proceeded to dismiss the appeal on the ground that the appellant in person is not present. It is all the more disquieting how the High Court declined to grant the application for restoration of appeal and to hear it on merits. Without dilating upon this point, relying on the decision of this Court in Rafiq v. Munshilal [(1981) 2 SCC 788], we think that the appellant's appeal which was admitted by the High Court should have been heard on merits after giving an opportunity to engage another advocate.

8. We, accordingly allow this appeal and set aside the Order of the High Court dismissing the appeal on the ground that the appellant was absent at the hearing of the appeal and failed to take steps to prosecute the appeal. We direct that the High Court should restore this appeal to its original number and proceed to dispose of the appeal on merits. The appellant is at liberty to engage his advocate to appear and take effective steps for the final disposal of the appeal. In the circumstances of the case, there will be no order as to costs. Status quo with regard to possession and the proceedings before the lower court as on today till the disposal of the appeal.

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