

Smt. Lachi Tewari and Others

Vs

Director of Land Records and Others

Civil Appeal No. 1007 of 1983

(D. A. Desai, A. N. Sen JJ)

03.10.1983

ORDER

1. Special leave granted.

2. When a notice was ordered to be issued in this case a specific direction was given that the notice must recite that the matter will be finally heard on that day. Such a notice has been served on the respondents. Yet respondents have not entered appearance. We, therefore, see no justification for serving a fresh notice, and proceed to dispose of the matter finally.

3. One Dwarika Nath Tewari, who is now dead, had obtained rule nisi in Civil Rule No. 217 of 1976 in the High Court of Assam, Nagaland, Meghalaya, Manipur & Tripura. When rule nisi came up for hearing on April 21, 1983 which appears to be the first day of hearing after the rule was issued, the learned Judges of the Division Bench of the High Court made an order which reads as under :

None to press this application. Accordingly the same is rejected. The rule is discharged. That stay order granted by this Court on May 6, 1976 stands vacated.

It appears that soon thereafter within a span of about 10 days an application was moved on behalf of the petitioner pointing out to the Court the circumstances in which neither the petitioner nor his three learned counsel were present and sought the indulgence of the Court to recall the order dated April 21, 1983 on the ground that April 21, 1983 happened to be a day on which the Court reopened after Bihu holidays and that the learned senior counsel who had gone to Calcutta during the vacation and not been able to return on account of the irregularity of air services. It was further stated that the two other learned counsel were busy in Court Nos. 2 and 3 when the matter was called for hearing and a request was made to pass over the matter. This ground did not find favour with the learned Judges of the High Court and the application for recalling the order was rejected. Hence this appeal by special leave.

4. The mere narration of facts would attract attention on what point is involved in this appeal. The petitioner obtained rule nisi in 1976 and waited for 7 years for its being heard. Suddenly one day the High Court consistent with its calendar fixed the matter for hearing on April 21, 1983. The petitioner had taken extra caution to engage three learned counsels. We fail to see what more can be expected of him. Further we fail to understand what more steps should he have taken in the matter to avoid being thrown out unheard. In *Rafiq v. Munshilal* ((1981) 3 SCR 509 : (1981) 2 SCC 788 : AIR 1981 SC 1402) this Court succinctly brought out this aspect. Says the Court : (SCC p. 789, para 3)

The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

Again in *Goswami Krishna Murarilal Sharma v. Dhan Prakash* ((1981) 4 SCC 574) this Court reiterated this very principal. And that squarely applies to the facts of this case. On this short ground we allow this appeal, set aside the order of the High Court dated April 21, 1983 as also the order refusing to recall the earlier order dated May 2, 1983 and restore the civil rule to the file of the High Court to be disposed of by the High Court on merits consistent with its calendar.

5. Earlier when the rule nisi was issued some interim relief was granted by the High Court which stood vacated when the matter was rejected for non-prosecution. Now when we restore the rule the interim order shall stand revived. The appeal succeeds to the extent herein indicated with no order as to costs.

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