

SUPREME COURT OF INDIA

Hari Shanker

Vs.

Gobind Parshad Jagdish Parshad

(S Quadri and S Variava JJ.)

25.01.2002

ORDER

1. Heard Mr. Dushyant Dave, learned senior counsel on behalf of the appellant and Dr. A.M. Singhvi, learned senior counsel on behalf of respondent No. 1.

2. Leave is granted.

3. These appeals are directed against the judgment and order of the High Court in C.M. Nos. 722-724 of 2000 in S.A.O. No. 365 of 1987 passed by the High Court of Delhi at New Delhi.

4. The appellant is a tenant of premises Nos. H-18 and 19, Gobind Mansion, Connaught Circus, New Delhi of which the first respondent is the landlord. On 18th January, 1985, the appellant suffered an order of eviction from the additional rent controller on the ground that he sub-let the premises, a ground available to the first respondent, the landlord to seek eviction under Section 14(1)(b) of Delhi Rent Control Act. The appellant carried the matter in appeal before the rent control tribunal. The tribunal, by its order dated 22nd July, 1987, reversed the order of the additional rent controller and allowed the appeal of the appellant. The first respondent filed the above mentioned second appeal from order (SAG) No. 365 of 1987 on 15th December, 1987. On 11th September, 2000, when the second appeal came up for hearing, the name of the advocate of the appellant was not shown in the 'cause list'. Consequently, the appellant went unrepresented. The learned single Judge of the High Court, who dealt with the appeal, allowed the appeal ex parte and set aside the order of the rent control tribunal. The appellant then filed applications being C.M. Nos. 722-24 of 2000 for condonation of delay and for setting aside the ex parte order dated 11th September, 2000. These applications were dismissed on 11th January, 2001. It is against that order, that the present appeals are filed.

5. Mr. Dushyant Dave, learned senior counsel appearing for the appellant contends that admittedly on 11th September, 2000, the name of the advocate of the appellant was not shown in the 'cause list'. Therefore, the High Court erred in not setting aside the ex parte judgment of the High Court passed in the second appeal. In support of his submissions, learned senior counsel has relied upon the judgment of this Court in G. Raj Mallaiah and Anr. v. State of A.P., . Dr. Singhvi, learned senior counsel, on the other hand, contends that

the High Court in its judgment had pointed out that the appellant had never been vigilant in prosecuting the case and that he was always cavalier, lackadaisical and negligent. Therefore, the High Court rightly dismissed the applications.

6. The short question that arises for consideration is : whether not showing the name of the advocate for the appellant herein in the 'cause list' is a sufficient cause to set aside the ex pane decree under Order IX, Rule 13 of Civil Procedure Code.

7. It is a general practice in the High Courts that the advocates identify their case in the 'cause list' of the day. An advocates' non-appearance in a case when the case is taken upon the ground that his name was riot shown in the 'cause list' is indeed a sufficient cause. See G. Raj Mallaiah's case (supra). However, the High Court remarked that the advocate did little more than filing the valalatnama and that the appellant was negligent and cavalier in prosecuting his case. In our view those remarks would be relevant in a case where in spite of showing the name in 'cause list' the advocate did not appear. In a case where name has not been shown in the 'cause list' the petitioner or his counsel cannot be found fault with for non-appearance. In this view of the matter, we set aside the order under challenge and restore the second appeal to the file of the High Court, to be heard and decided afresh, in accordance with law.

8. Inasmuch as the eviction proceedings were initiated in 1972 and about 30 years' period has elapsed, we directed the parties to appear before the High Court on 12th February, 2002 and we expect that the High Court will take up and dispose of the appeal on that date or if that is not convenient for the High Court, on any date immediately thereafter, in accordance with law.

9. The appeals are, accordingly, allowed. There shall be no order as to costs. SLP (C) No. 3465 of 2001 :

10. Heard Mr. Dushyant Dave, learned senior counsel on behalf of the appellant and Dr. AM. Singhvi, learned senior counsel on behalf of respondent No. 1.

11. Leave is granted.

12. In view of the order passed in SLP (C) Nos. 2166-2168, this appeal is allowed. There shall be no order as to costs.