

**SUPREME COURT OF INDIA**

Chiranji Lal

Vs.

Prem Lal

C.A.No.4770 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

01.08.2008

**ORDER**

1. Leave granted.
2. The plaintiff is the appellant herein. He filed a suit for decree for permanent injunction. It was dismissed for default by an order dated 8.9.1986.
3. One of the grounds taken in the application for restoration of the suit, which was prepared on 9.9.1986 and filed on 17.9.1986, was that the pairokar of the appellant could not reach the Court in time. The said application was signed by the lawyer of the appellant. No signature of the pairokar was put on the said application.
4. The learned trial Judge dismissed the said application for restoration holding that the said pairokar had no authority to file the application, although, the same was signed by his lawyer.
5. The learned trial Judge, furthermore, held as under:

“...Even in the application for restoration given by the advocate for the plaintiff reason of his absence has not been made clear, by which it is clear that in the original case on the date of hearing regarding absence of plaintiff there is no sufficient ground explained in the restoration application.”
6. An appeal preferred thereagainst was dismissed. The High Court by reason of the impugned judgment went into the merit of the matter and held as under:

“As the suit is of the year 1986 simply for injunction without claiming any right in the property in dispute and the reasons disclosed in the application were not satisfactory. Therefore finding recorded by the courts below can not said to be perverse. The finding of the fact has been recorded that petitioner has failed to make out any case for restoration. It has also been brought to the notice of the court that the alleged

paikar who had filed the application for restoration, namely, Raj Kumar had filed the suit impleading the petitioner as defendant No.1 and respondent No.4, the respondent No.4 has been impleaded as defendant No.2. In such circumstances, it appears that they are in collusion with petitioner.”

7. Learned counsel appearing on behalf of the appellant would urge that in terms of Rules 27 and 28 of the *General Rules(Civil),1957* framed by the Allahabad High Court, it was not necessary that the application should have been filed by the parties to the suit. It was, furthermore, submitted that the High Court committed a serious error in entering into the merit of the suit in its impugned judgment.

8. Learned counsel appearing on behalf of the respondents would support the impugned judgment contending that having regard to the provisions of Order VI Rule 14 of the Code of Civil Procedure, it was obligatory on the part of the appellant to sign the application for restoration of the suit.

9. The General Rules(Civil), 1957 framed by the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India as also Section 122 of the Code of Civil Procedure should ordinarily be followed by the subordinate Court. Rules 27 and 29 of the said Rules read thus:

“27. Person presenting application: Every application or petition shall at the time of presentation bear the name and also full signature or thumb mark of the person actually presenting the same together with the date of presentation.

29. Person from whom applications may be received: Except an application for a copy, no application or petition and no pleading required or authorised by law to be made by a party in court shall be received from any person other than the party himself, his pleader, or his recognised agent (See Order III, rules 1 and 2).

Registered clerks of pleaders, as such, can present only such applications as they are authorised to present by the rules given in Chapter XXV of these rules.”

10. In terms of Rule 29, therefore, an application for restoration was not required to be signed by the parties to the suit.

11. The suit was dismissed for default on 8.9.1986. It appears from the records that an application for restoration was prepared on 9.9.1986. Indisputably, it was filed on 17.9.1986. Evidently, therefore, the appellant took prompt steps for filing the application for restoration.

12. Order VI Rule 14 of the Code of Civil Procedure is not applicable, inasmuch as an application for restoration either in terms of Order IX Rule 4 or Rule 9 of the *Code of Civil Procedure* is not 'pleading' within the meaning of the said provisions.

13. Therefore, in the facts and circumstances of this case and having regard to the prompt step taken by or on behalf of the appellant in filing the application for restoration of the suit, there cannot be any doubt whatsoever that it was eminently fit and proper case for passing an order of restoration of the suit.

14. The grounds urged on behalf of the respondents that the appellant was required to put his signature on the application besides being illegal, in any event, the same being a matter of procedure, the learned trial Judge should have given an opportunity to the parties to rectify the said defect, if any, and only on that technical ground the application for restoration should not have been rejected.

15. Order III Rule 1 of the Code of Civil Procedure provides for appearance in a suit either by recognised agent or by a pleader. Once a Vakalatnama is executed in favour of an Advocate, evidently, in terms of Rule 4 Order III, he would have the authority also to file an application for restoration.

16. The High Court, in our opinion, committed a serious error in entering into the merits of the dispute between the parties which were required to be determined by the trial Court after framing issues and adduction of evidence by the parties in support of their respective contentions.

17. For the reasons aforementioned, the impugned judgments cannot be sustained. They are set aside accordingly. We in exercise of our power under Article 142 of the Constitution of India and having regard to the facts and circumstances of this case, set aside the order dated 8.9.1986 and restore the suit to its original file.

18. The learned trial judge is directed to dispose of the suit as expeditiously as possible and preferably within a period of six months from the date of communication of this order.

The appeal is allowed.