

**SUPREME COURT OF INDIA**

Raj Kumar Jain

Vs.

Indra Prastha Builders Pvt. Ltd

C.A.Nos.26-27 of 2009

(B.N. Agrawal and G.S. Singhvi JJ.)

07.01.2009

**ORDER**

1. Leave granted.

2. By an order dated 18th August, 2006, the High Court dismissed for non- prosecution, the first appeal preferred by the appellants against the judgment and decree dated 22nd August, 1988 passed by the District Judge, Dehradun in O.S. No.50/1986. The application for restoration of the appeal was dismissed by the High Court on 16th April, 2007 without adverting to the fact that absence of the counsel for the appellants was on account non-marking of the case in his cause list. The petition filed for review of that order was dismissed on 15th June, 2007.

3. Having heard learned counsel for the parties and perused the records, we are convinced that the impugned orders are liable to be set aside. In our view, the High Court should have, by taking cognizance of the averments contained in the affidavit filed in support of the restoration application, restored the appeal by imposing heavy costs on the appellants.

4. Accordingly, the appeals are allowed, impugned orders are set aside and First Appeal No.79 of 2001 is restored to the file of the High Court subject to the condition of the appellants' paying rupees fifty thousand as costs to the respondents within eight weeks.

5. As the appeal was filed before the Allahabad High Court in the year 1988 and the same has remained pending before Uttarakhand High Court for last more than twenty years, it would be in the interest of the justice that the same is disposed of at an early date.

6. Accordingly, the High Court is requested to dispose of the appeal as expeditiously as possible.