

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 12591 of 2023

Petitioner :- Ratan Pal Singh

Respondent :- Teekshpal Singh

Counsel for Petitioner :- Pankaj Kumar Mishra

Hon'ble Prakash Padia,J.

1. The present petition under Article 227 of the constitution of India has been filed challenging the order dated 16.12.2022 passed in Civil Appeal No.141 of 2018 by which the appeal filed by the plaintiff-appellant was dismissed in default. Against the aforesaid order restoration application was filed but the same was also rejected on 30.10.2023.

2. Aggrieved against the aforesaid petitioner has preferred present petition.

3. It appears from perusal of the record that the matter was taken up on 16.12.2022 before recess an application for adjournment was filed on behalf of the petitioner since same was not found satisfactory the matter was directed to be listed after recess.

4. It is argued by counsel for the petitioner that after adjournment application was moved the counsel for the petitioner was under apprehension that the case will not be taken up or any adverse order will be passed against him hence nobody was present after recess. After recess when the matter was taken up since nobody was present the appeal was dismissed in default. While dismissing the same it was mentioned that earlier also when the case was called nobody was present. Aggrieved against the aforesaid restoration application was filed but the same was also

rejected on the same ground.

5. Apart from other arguments one of the arguments raised by the counsel for the petitioner is that petitioner will argue the appeal on merits before the appellate court without taking any unnecessary adjournment. It is further argued that the order dismissing the appeal is absolutely non speaking order.

6. In view of the order proposed to be passed herein, no useful purpose would be served by putting the respondent to notice and keeping this petition pending before this Court. However, in case the respondent feels aggrieved by the order his/her right to seek modification/variation of the order is being kept reserved.

7. Heard learned counsel for the petitioner and perused the records.

8. From perusal of the records it transpires that the cogent reasons were there for adjournment of the case but without considering anything and by non speaking order the appeal filed by the petitioner was dismissed in default. Though in the restoration application cogent reasons were mentioned but the same were also not taken into consideration while rejecting the same.

9. In this view of the matter, the Court is of the opinion that the aforesaid orders namely 16.12.2022 and 30.10.2023 are liable to be set aside and the same is hereby set aside.

10. The petition is allowed.

11. In the facts and circumstances of the case, the appellate court is directed to decide the appeal *expeditiously strictly in accordance with law* and without granting unnecessary adjournment unless there is no legal impediment.

Order Date :- 8.12.2023

Pramod Tripathi