

Party Name : THE EXECUTIVE ENGINEER & ANR Vs POWER DASGUPTA & ANR

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned Sr. counsel Mr. D. Chakraborty assisted by learned counsel Mr. H. Laskar for the petitioners.

This is a petition filed under Order XLI, Rule 19 of CPC seeking re-admission of RSA 29/2008 setting aside the dismissal order dated 27.05.2015 passed by this Court.

None appeared for the respondents in spite of service of notice.

Brief fact is that Money Suit No. 01/2005 was instituted by the respondent No.1, Power Dasgupta seeking a decree of an amount of Rs.2,00,000/- as compensation for the damage caused to him. The suit was decreed.

Challenging the decree, two appeals were filed in the Court of District Judge, South Tripura, Udaipur i.e. Money Appeal No. 3 of 2006 and Money Appeal No.2/2007. Both the appeals were disposed of by a common judgment dated 08.04.2008. Challenging the said judgment, the present petitioners preferred RSA No.29/2008 and another second appeal No.64/2008 was preferred by one Sitangshu Chakraborty. Both the appeals were fixed for hearing analogously. On 27.05.2015 the appeals were heard and judgment was delivered.

Learned Sr. counsel Mr. Chakraborty submits that on the date listed for hearing of the appeal, i.e. on 27.05.2015 he being an aged counsel fell ill and therefore left Court at about 1:00 p.m. requesting his junior Mr. H. Laskar to appear and to pray for time and that his junior appeared and prayed for adjournment but this Court heard the learned counsel of the appellant of the other second appeal and disposed both the appeals by a common judgment dated 27.05.2015.

I have meticulously gone through the judgment dated 27.05.2015 passed by this Court. It is clearly reflected in that judgment that on the date fixed for hearing i.e. 27.05.2015, in RSA 29 /2008 none appeared for the appellant and learned counsel Mr. G. S. Bhattacharjee for the respondent No.1 was present and he was heard. In the other appeal learned counsel of both side were present and they were heard. Since there was no representation on behalf of learned counsel appearing in RSA 29/2008, it was dismissed.

The contention of learned Sr. counsel Mr. Chakraborty that his junior Mr. Laskar was present and prayed for time does not appear to be correct and true submission since there is no reflection in the judgment that anybody on behalf of the appellant or the learned counsel of the appellant appeared before the Court. The appeals have been disposed of by a common judgment and no doubt the appeal filed by the present petitioners was dismissed but it was by a common judgment passed by this Court. Therefore, I find no reason at all to restore the RSA 29 of 2008.

CM application accordingly stands disposed of.