

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8433 OF 2019
(arising out of Special Leave Petition(C)No.11636/2015)

JAGDISH NARAIN SINGH @ JAGDISH NARAIN SINHA Appellant(s)

VERSUS

RAM PRIT SINGH & ORS. Respondent(s)

O R D E R

Leave granted.

No one has appeared for the respondents to oppose the appeal even in the second call, in spite of service of notice.

This appeal is against the final judgment and Order dated 23.01.2015 passed by the High Court of Patna dismissing the appeal being [M.A.No.53/2009] of the appellant against the Order passed by the Additional District and Sessions Judge, Fast Track Court-V, Chhapra in Misc.Case No.4/2000 rejecting the prayer for rehearing Title Appeal No.56/1985/150 of 1986 filed by the respondents.

It appears that the plaintiff/respondent filed a Title Suit No.11/1980 for declaration of title and confirmation of possession. By the judgment dated 7.05.1985, the suit was dismissed on contest. The plaintiff/respondent No.1 filed an appeal and it was allowed ex-parte.

The appellant filed an application for recalling of the ex-parte order contending that Title Appeal No.56/1985 had been heard ex-parte. The application was dismissed whereupon the appellant appealed to the High Court against the order of the Additional District and Sessions Judge, allowing the appeal.

The appeal as observed above, has been dismissed by the order impugned. The Court found that the only ground taken by the appellant was inaction of the advocate which was in the opinion of the High Court, no ground for rehearing of the appeal.

Order 41 Rule 21 reads as follows:

"Where an appeal is heard ex-parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him."

In our opinion, when a litigant engages a lawyer briefs him and pays or promises to pay the fees demanded by him, he reposes trust on his lawyers to do whatever is required. Once a lawyer accepts a brief, he assumes such responsibility. The litigant is not required to attend Court or keep track of the proceedings. Reference may be made to Rafiq Vs. Munshilal reported in AIR 1981 SC 1400.

The High Court having arrived at the finding that there was inaction of the advocate, ought not to have rejected the appeal of the appellant holding that action of the advocate was not a ground for rehearing of the appeal.

The appeal is thus allowed and the impugned order of the High Court is set aside.

The Order of the Additional District and Sessions Judge, dismissing the appeal for rehearing is also set aside and the appeal is remitted back to the Additional District and Sessions Judge, for rehearing.

.....J.
[INDIRA BANERJEE]

.....J.
[M.R. SHAH]

New Delhi;
October 18, 2019.

ITEM NO.44

COURT NO.16

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11636/2015

(Arising out of impugned final judgment and order dated 23-01-2015
in MA No. 53/2009 passed by the High Court Of Judicature At Patna)

JAGDISH NARAIN SINGH @ JAGDISH NARAIN SINHA Petitioner(s)

VERSUS

RAM PRIT SINGH & ORS. Respondent(s)

Date : 18-10-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s)

Mr. Rajiv Shankar Dvivedi, AOR

For Respondent(s)

Mrs. Sarla Chandra, AOR(NP)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stand disposed of.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT

(BEENA JOLLY)
BRANCH OFFICER

(The Signed Order is placed on the file)