

Precedents on readmission of appeal

GOSWAMI KRISHNA MURARILAL SHARMA

vs

DHAN PRAKASH

Citations : 1981-SCC-4-574

Civil Procedure Code, 1908 - Order 41, Rules 17 and 19 and Order 23 - Rule 1 - Practice and procedure in filing appeal - Appellant had engaged his advocate who withdrew, the reason for withdrawal being known only to the Advocate and not ascertainable from the record - Court cannot straight away proceed to dismiss the appeal on the ground that the appellant in person is not present - High Court declined to grant the application for restoration of appeal and to hear it on merits - Held, appellant's appeal which was admitted by the High Court should have been heard on merits after giving an opportunity to engage another advocate Held The appellant had engaged his advocate who withdrew, the reason for withdrawal being known only to the Advocate and not ascertainable from the record. The Court straight away proceeded to dismiss the appeal on the ground that the appellant in person is not present. It is all the more disquieting how the High Court declined to grant the application for restoration of appeal and to hear it on merits. Without dilating upon this point, relying on the decision of this Court in Rafiq vs. Munshilal (1981) 2 SCC 788, the appellant's appeal which was admitted by the High Court should have been heard on merits after giving an opportunity to engage another advocate. Conclusion Appellant's appeal which was admitted by the High Court should have been heard on merits after giving an opportunity to engage another advocate. Case Law Analysis Rafiq vs. Munshilal (1981) 2 SCC 788 relied on. Legislation referred to Civil Procedure Code, 1908, Or. 41, rr. 17 & 19 & Or. 23, r. 1 <080>

RAFIQ
vs
MUNSHILAL

Citations : 1981-AIR(SC)-0-1400 1981-SCC-2-788

Constitution of India - Articles 136 and 226 - High Court disposed of the appeal preferred by the present appellant in the absence of the counsel for the appellant - When the appellant became aware of the facts that his appeal had been disposed of in the absence of his advocate, he moved an application in the High Court to recall the order dismissing his appeal and permit him to participate in the hearing of the appeal - This application was rejected by the High Court - Held, rejection of application not justified - As the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs. 200 should be recovered from the advocate who absented himself - Contesting party should not suffer for the inaction, deliberate omission, or misdemeanour of his agent advocate. Held Obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. The Supreme Court allowed the appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs. 200 should be recovered from the advocate who absented himself. Conclusion Contesting party should not suffer for the inaction, deliberate omission, or misdemeanour of his agent advocate. Legislation referred to Constitution of India, arts. 136 & 226. <080>
