

Joginder Singh Vs Commandant 97 and others Cs 1129-2016

Present:- Sh. Inderjit Singh, Advocate, counsel, for plaintiff.
Sh. P.S. Ghuman, Advocate, counsel for defendants.

This order of mine shall dispose of an application filed by defendant plaintiff/applicant, under section 151 C.P.C, for recalling the order dated 12.07.2018.

02. In the said application applicant/plaintiff stated that the case was fixed for 12.07.2018 but inadvertently the plaintiff had noted the wrong date of hearing i.e. 18.07.2018. On 18.07.2018 when he along with his counsel came to court for evidence but the case was not listed and he inquired about the case from Ahlmad and then he came to know that the case was previously fixed on 12.07.2018 and now it is adjourned for 20.07.2018. He came to know that the court has closed his evidence by order. Plaintiff had also tendered his affidavit in chief in his evidence and the case was fixed for his cross-examination but due to above said reason he could not present on 12.07.2018. Lastly prayed that plaintiff/applicant be afforded an opportunity to examine the plaintiff after recalling the order dated 12.07.2018, in the interest of justice.

03. Upon notice said application has been contested by respondent/defendant by filing reply, wherein, it has been submitted that on 12.07.2018 defendants counsel appeared and court have passed order rightly after calling the case many times. Lastly, prayed that application is without merit and be dismissed.

04. Heard and record perused. After hearing the contentions of both the parties and perusal of record, Court is of considered and

confirmed view that nobody should be condemned unheard and every person is to be given proper opportunity of being heard. And moreover reliance can be placed upon **Rajeshwari Vs. Puran Indoria (2005) 7 SCC 60**, in which it has been held by the Supreme Court that if there ever be an occasion when one side is closed and a petition is filed for re-opening the same, the Court shall not normally dismissed the petition but shall consider giving an opportunity subject to appropriate terms as to cost, except in extreme circumstance of manifest contumacious conduct or there is seen an attempt to harass the other side by deliberate delays". Moreover, generally parties are not aware about the technicalities of judicial process and it seems that in present case parties have suffered due to negligent conduct of counsel for plaintiff. Parties shall not be forced to suffer due to conduct of his counsel, as such, in view of the discussion above and also placing reliance on the judgment above one effective opportunity is granted to the plaintiff to produce all the witnesses on next date of hearing subject to cost of ₹ 1000/- to be paid to the opposite party, failing which no further opportunity shall be granted to the plaintiff.

05. To come up on 29.01.2019 for PWs and payment of cost so imposed.

Date of Order: 05.12.2018
Gurpreet Singh,
Stenographer Grade III
Next Date: 29.01.2019
Purpose: _____

(Gurpreet Kaur),
Civil Judge (Jr. Divn.)/Gsp
UID No. PB0471

Note: Dictated directly on computer