

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).5830 OF 2011
[Arising out of SLP(C)No..25857 OF 2008]

SHANKUNTALA BAI & ORS.

Petitioner(s)

VERSUS

VIJAY SADASHIVRAO MURATKAR

Respondent(s)

O R D E R

Leave granted.

2. This appeal is directed against the order dated 14th August, 2008, passed by the Nagpur Bench of the Bombay High Court in A.O.No.19 of 2007, by which the said appeal was dismissed.

3. In the appeal, the appellants herein had challenged the order passed by the Civil Judge, Senior Division, Daryapur, on 28th February, 2007, in R.M.J.C. No.9 of 2007, by which the court had rejected the application filed by the appellants for setting aside the ex parte judgment against them.

4. It appears that the suit was once dismissed in 2002, but was restored on an application filed by the respondents herein C.A..../11@SLP(C)25857/08

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under Order 9 Rule 9 CPC on 3rd January, 2005.

Thereafter, the

suit was decreed ex parte on 9th December, 2005.

The application

thereafter filed by the appellants herein under Order 9 Rule 13 CPC on 25th April, 2006, for setting aside the ex parte judgment and decree on the ground that the appellants had no information from their counsel about the progress of the suit, was rejected basically on the ground that there was no pleading whatsoever in the application as to what the appellants had done for a period of six years since the passing of the ex parte decree.

The

High Court has observed that it was unbelievable that th

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counsel did not inform the appellants about the progress of the suit for a period of six years, while also observing that it was worthy to note that appellants did not adduce any oral or documentary evidence in support of their application and preferred to keep quiet.

5. The High Court also concluded that the decree-holder could not be asked to litigate and re-litigate in the court for the fault of a negligent party.

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6. We are afraid that the High Court appears to have proceeded on the erroneous footing that the appellants were responsible for the delay of six years after the filing of the written statement in the disposed of suit, when the reality is C.A..../11@SLP(C)25857/08

that the suit was dismissed and was restored only in 2005 on the application of the respondents under Order 9 Rule 9 CPC.

7. We are, therefore, convinced that the High Court was prejudiced by the aforesaid finding which is incorrect.

8. Accordingly, we allow the appeal, set aside the impugned orders dated 14th August, 2008, and 28th February, 2007, passed by the High Court and the trial court. The application under Order 9 Rule 13 CPC is also allowed. The judgment and decree of the trial court are set aside and the suit is restored for a fresh trial.

9. There will be no orders as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

.....J.
(SURINDER SINGH NIJJAR)

NEW DELHI;
July 18, 2011.
C.A..../11@SLP(C)25857/08

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ITEM NO.32

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).25857/2008
(From the judgement and order dated 14/08/2008 in AO No. 19/2007 of
The HIGH COURT OF BOMBAY AT NAGPUR)

SHANKUNTALA BAI & ORS.

Petitioner(s)

VERSUS

VIJAY SADASHIVRAO MURATKAR

Respondent(s)

(With prayer for interim relief and office report)

Date: 18/07/2011

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Petitioner(s)

Mr. Ardhendumauli Kr. Prasad, Adv.
Mr. Ishit Saharia, Adv.
Dr. Kailash Chand, Adv.

For Respondent(s)

Mr. Shishir Deshpande, Adv.
Mr. Nikhil Mehra, Adv.
Mr. Amit Yadav, Adv.
Ms. Sujata Kurdukar, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

There will be no orders as to costs.

C.A..../11@SLP(C)25857/08

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(Sheetal Dhingra)
Court Master

(Juginder Kaur)
Assistant Registrar

[Signed order is placed on the file]