

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 2051-2052 OF 2009**  
**(Arising out of SLP(C) Nos. 2135-2136/2008)**

**Lakhi Narayan Sonowal**

**.. Appellant(s)**

**Versus**

**State of Assam & Anr.**

**.. Respondent(s)**

**ORDER**

**Leave granted.**

These appeals are directed against two orders, dated 22nd August, 2007 and 17th September, 2007, passed by the Gauhati High Court at Gauhati respectively in Writ Appeal No. 298 of 2007 and Miscellaneous Case No. 3254 of 2007. By the first order, the appellate Bench of the High Court dismissed the appeal preferred by the appellant for non-prosecution as his counsel failed to appear in Court and by the latter order, application seeking recall of order dated August 22, 2007 has been dismissed.

It appears that on dismissal of the appeal on August 22, 2007, an application for recall of the said order was filed on August 24, 2007, wherein it was pleaded that counsel for the appellant could not appear in Court because of the confusion created by the Bandh call given by a Socio-political organisation, followed by motor strike, which

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disrupted the normal life. Rejecting the plea of the appellant, the Division Bench observed thus :

"On 22.8.07 this Court functioned normally and the learned Advocates appeared in many cases and, therefore, we are not inclined to accept that the learned counsel for the petitioner was prevented by reasons beyond his control.

We see no merit in this application. The application is dismissed."

Hence the present appeals.

We have heard learned counsel for the parties.

It is true that no Court is obliged to adjourn a case because of the difficulty of a counsel and as a matter of fact it is the solemn duty of every Court to proceed with the judicial business fixed for the day yet in an appropriate case where no fault lies at the door of the litigant, the Court should not be in a hurry to dismiss the case in default or for non-prosecution on account of absence of his counsel. Ultimately, it is the litigant who is to suffer the consequences of such an order. In any case the Court should be considerate while dealing with an application for recall of dismissal or ex-parte order and if a justifiable cause for non-appearance of the counsel is made out, such an order may be recalled, subject of course to the conditions the Court may like to impose.

..3/-

Having perused the application filed by the appellant for recall of order dated 22nd August, 2007, which has been placed on record, we are convinced that it was a fit case where the Appellate Bench of the High Court should have exercised its jurisdiction and recalled the said order, dismissing the appeal for non-prosecution.

Accordingly, the appeals are allowed, orders dated 22nd August, 2007 and 17th September, 2007 are set aside and writ appeal is restored to its original position for disposal on merits in accordance with law.

No order as to costs.

.....J.

[ D.K. JAIN ]

.....J.

[ R.M. LODHA

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NEW DELHI,  
MARCH 27, 2009