

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3542 OF 2009
(Arising out of SLP(C) No. 15587 of 2008)

Satpal Singh

.....Appellant

Versus

Chunni Lal (since deceased) through LRs.
Respondent

.....

ORDER

H.L. Dattu,J.

- 1) This is an appeal by Special Leave against the judgment and order dated 23.5.2008 of the High Court of Judicature for Rajasthan, Jaipur Bench, in S.B. Civil Misc. Appeal No. 759 of 2002. We grant special leave and dispose of this appeal as hereunder.
- 2) The respondent herein, had filed a suit for eviction against the appellant in the year 1993. The suit was decreed by the Trial Court on 31.1.2001, granting possession of the suit schedule premises to the respondent.

- 3) The appeal filed against the said judgment and decree was dismissed for default on 19.4.2002 by the Additional District Judge due to non-appearance of the appellant and his learned counsel. The appellant then moved an application under Order 41 Rule 19 of the Code of Civil Procedure read with Section 5 of the Limitation Act, 1963 for restoration of the First Appeal No. 4 of 2001. The same was dismissed on 19.4.2002.
- 4) The appellant filed a second appeal challenging the correctness or otherwise of the order dated 19.4.2002 in S.B. Civil Misc. Appeal No. 759 of 2002. The appeal was dismissed vide judgment dated 23.5.2008. The Single Judge had come to the conclusion that the appellate Court was justified in dismissing the application, holding that there was no sufficient cause shown either for the condonation of delay or for setting aside the ex-parte order, and thereby confirmed the order of the appellate Court.
- 5) The appellant, in the application filed for restoration of the appeal had stated, that, on receiving the intimation of the serious illness of his elder brother, he immediately left to see his brother on 15.1.2002. It appears from the Death Certificate of Balbir Singh brother of the appellant that Balbir Singh died on 20.1.2002, following the day when the appeal was fixed for hearing i.e. 19.1.2002, before the appellate Court. It is also the case of the appellant that his wife met with an accident and due to which he was busy in attending her for almost one and half months. In view of the above

unforeseen events, the appellant could not appear before the Court, on the day when the appeal had been fixed for hearing. The appellant had also stated that it was the duty of the counsel to appear in the matter when it was listed for hearing and also to intimate his client about the outcome of the appeal. It was further stated, that his learned counsel for the reason best known to him also did not appear on the date fixed for hearing of the appeal nor he intimated about its dismissal of the appeal for default.

6) Having gone through the explanation offered in the application filed for restoration of the appeal, in our considered view, the learned Single Judge was not justified in dismissing the application for restoration of First Appeal No. 4 of 2001 for default under Order 41, Rule 19 of the Code, on the ground of non- appearance of the appellant or his learned counsel. We have no doubt in our mind, that the appellant was justified in moving the application for restoration of the appeal and setting aside of ex-parte order particularly when his brother had died and his wife had met with an accident during the relevant period.

7) In the result, the appeal succeeds and is allowed. The order passed by the High Court in S.B. Civil Misc. Appeal No. 759 of 2002 dated 23.05.2008 and the order passed by the first appellate court in Appeal No. 4 of 2001 are set aside. The first appellate court is directed to take on board the appeal and decide the appeal on merits within an outer limit of six months from the

date of receipt of certified copy of the order passed by this Court. No order as to costs.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

**New Delhi,
May 13, 2009.**

