1968 KHC 97
Kerala High Court
V. R. Krishna Iyer, J.
SREEDHARA KURUP v. MICKEL
C. R. P. No. 290 of 1967
19 July, 1968

Code of Civil Procedure, 1908, O.9 R.9 - Touch stone of case under O.9, R.9 is presence of "sufficient cause" for non appearance when is called on hearing -- As a matter of grace, Court cannot restore the case -- No litigant shall be deprived of a hearing on the basis of the principle of natural justice -- It is a matter of wise discretion to be exercised by Court to negative opportunity for hearing for reasons like gross negligence or carelessness. (Para 1)

1938 Bom. 199; Referred to

N. Venkatarama Iyer; For Petitioner
No appearance; For Respondent

ORDER

1 The plaintiff is the revision petitioner and he seeks to set aside the order of the Trial Court refusing to restore a suit dismissed under O.9 R.9 CPC. The suit came up for trial on 7-2-1966. On that date adjournment was moved on behalf of the plaintiff which was refused and the suit was dismissed. On 14-2-1966 the plaintiff petitioner put in a petition for restoration of the suit on the ground that on the date the case came up for trial he was ill and therefore could not attend Court. He gave evidence in support of his illness, but the Trial Court did not accept his version and declined to restore the suit. The touch stone in a case under O.9 R.9 CPC. is the presence of sufficient cause' for non appearance when the suit was called on for hearing. If there is no sufficient cause the Court cannot restore the suit as a matter of grace. On the other hand, it has always to be remembered that the broad principle of natural justice that informs our judicial institution is that a litigant should not be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part. In most cases in which the party has been absent at the time of the hearing and applies for restoration of the suit later, there is some degree of carelessness or negligence on his part. It also happens or one not satisfactorily established, even if true. It is largely a matter of wise discretion to be exercised by the Court bearing in mind the wholesome principle that the right of a party to be heard should be negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs. The brooding spirit of natural justice must be in the background while ascertaining whether there is sufficient cause. A strict and narrow construction defeats the ends of justice which can be reached only after a fair fight between the disputants. The observations of Mulla (Vol. I page 806 para 8(4) ..... 13th Edn.) and the ruling in AIR 1938 Bombay 199 (Special Bench)

lend broad support for this benignant approach, I am afraid the Trial Court, in this case, has not viewed the matter in this way. The absence of a medical certificate and the fact that a few days time has elapsed between the dismissal of the suit and 'the application for restoration have weighed with the Court in rejecting the evidence of Pw. 1 and the notion for restoration. Having due regard to the circumstances of the case, I am satisfied that the approach made was not correct and the suit should have been restored to file.

2 I set aside the order of the Trial Court and direct restoration of the suit to file. In the circumstances, the plaintiff petitioner must pay costs Rs. 10/- to the defendants as an infliction to induce future diligence within one month from the date of receipt of the order in the Trial Court as a condition precedent for restoration.
