

IN THE HIGH COURT OF KARNATAKA,
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 16th DAY OF DECEMBER 2009

P R E S E N T

THE HON'BLE MR.JUSTICE D.V.SHYLENDRA KUMAR

A N D

THE HON'BLE MR.JUSTICE K.N.KESHAVANARAYANA

MISC.CVL.153272/2009 FOR RECALLING ORDER
DATED 8.9.2008 AND FOR NON FILING OF THE
AFFIDAVIT OF BALAKRISHNA

IN

REGULAR FIRST APPEAL NO.1019 /2000

BETWEEN:

The Commissioner,
Karnataka Housing Board,
Bangalore.

APPELLANT

(By Sri Vijay Pal & Sri R.S.Sidhapurkar, Sri Shivakumar
Malipatil, Sri Raghavendra Kulkarni, Sri Basavaraj V.
Sabarad, Sri H.B. Mahesh, Sri K.R. Balakrishnan & Sri
R.S.Patil, Advs..)

AND:

Sri Basavaraj,
Son of Tamanna Konded,
Aged about 53 years,
Residing at No.10-247,
Konded Galli,
Lower Lane, Brahmapur,
Gulbarga.

RESPONDENT

(By Sri Manikappa Patil for C/R
Sri Shivaputrappa K. Barude, advs.)

This Misc. CVL.153272/09 is filed under Section 151 of C.P.C. praying to recall the order dated 8/9/2008 and for non-filing of the affidavit of Balakrishna.

This Misc. Cvl. 153272/09 Coming on for further orders this day, D.V.SHYLENDRA KUMAR, J made the following:

ORDER

This appeal has come up for further orders on Misc.Cvil.153272/2009 for recalling order dated 8.9.2008 and regarding non filing of the affidavit of Balakrishna.

The requirement of filing of the affidavit of Balakrishna, erstwhile Advocate appearing for the appellant is in terms of order of this Court dated 13.11.2009, which reads as follows:-

"KLMJ & ASPJ:

13.11.2009

ORDER ON MISC. CVL. NO.153272/09

This appeal was dismissed on 8.9.2008 for non-prosecution. To recall the said order, the present application is filed on the ground that when the case was listed on 8.9.2008, on account of train reaching Gulbarga late, the counsel on record Sri K.R.Balakrishna could not appear before this court.



Considering the cause shown by the appellant, we had orally directed the learned counsel who has filed this application, to file the affidavit of Sri Balakrishna to show that on 8.9.2008 he could not appear before this court on account of the train being late on that day. In spite of such direction, the appellant has not filed the affidavit of Sri Balakrishna.

One Syed Peer Pasha, Assistant Executive Engineer of P.W.D. who is present in court today, submits that in spite of best efforts of the Housing Board, Sri Balakrishna is not willing to file the affidavit. Therefore, we cannot accept the cause shown by the appellant herein. Nothing is produced to show that Sri Balakrishna has in fact travelled from Bangalore to Gulbarga and at what time the train reached Gulbarga is not forthcoming. Under the circumstances, we cannot grant any relief unless and until the affidavit of Balakrishna is filed and requisite documents produced to show that he did travel from Bangalore to Gulbarga on that day.

Under the circumstances, it is open to the Housing Board to file the affidavit of the counsel, Sri Balakrishna.

Call in the next week."



On the subsequent dates also, there being no proper representation and on the appearance of Sri Syed Peer Pasha, the Assistant Executive Engineer of the appellant-board at Gulbarga, the case has been adjourned to today, as per our earlier order dated 9.12.2009, which reads as under:-

"DVSKJ & KNKJ:

9/12/2009

While Sri R.S. Sidhapurkar, learned counsel who had filed power earlier and whose name is still figuring in the cause list as appearing for the appellant submits that the appellant has collected back all case papers and he is not appearing any more in the case and he is before the Court to attend next matter. There is no other representatives for the appellant-Karnataka Housing Board though names of not less than six more advocates is shown in the cause list as advocates for the appellant.

2. However Sri Syed Peer Pasha, who claims to be the Asst. Executive Engineer of the Board at Gulbarga is present before the Court and requested for a week's time to make some better arrangement for the appearance of counsel, who can attend on behalf of the appellant Board.

3. List next week for further orders and in the meanwhile the appellant has to comply with

the earlier direction of filing of the affidavit of Sri Balakrishna the erstwhile counsel who was appearing for them at Bangalore and who is the root cause for the present situation in the appeal having been dismissed for non-prosecution.

List this appeal on 16/12/2009."

Sri Shivakumar Malipatil, learned Counsel has appeared for the appellant and Sri Syed Peer Pasha, the Assistant Executive Engineer of the appellant-Board at Gulbarga is also present before the Court.

Learned Counsel for the appellant has explained that the reason for no representation for the appellant on 8.9.2008 on which date the appeal was dismissed for non-prosecution was not really due to the absence or the late reaching of the then Counsel Sri Balakrishna, as indicated in the affidavit of Syed Peer Pasha.

Before transfer of appeal to the Gulbarga bench of the High Court of Karnataka, one Raghavendra Kulkarni, learned Counsel was handling the matter. After transfer of the appeal, there was no further entrustment of the appeal to any other Counsel at Gulbarga and in such circumstances, the appeal had

[Signature]

been dismissed for non-prosecution on 8.9.2008. But Counsel Mr R S Patil, had been entrusted with the appeal papers subsequently for the purpose of preparing an application for recalling the order along with an affidavit. The deponent Sri Syed Peer Pasha, submits in the affidavit filed today that he was under the bonafide impression that the appeal has been dismissed for non appearance of the Counsel Sri Balakrishna and that was not the fact realised later and that it is a mistake that had crept in his earlier affidavit. By filing a fresh affidavit, he assures the Court that henceforth he will sign papers only after knowing the contents of the same and not otherwise.

Sri Shivakumar Malipatil, learned Counsel states that in the circumstances of the case, the present affidavit placed before the Court today may be accepted and order dismissing the appeal for non prosecution be recalled. Submission as well as the affidavit accepted. We condone the lapse on the part of the deponent and recall the earlier order dated 8.9.2008, dismissing the



appeal for non-prosecution. Appeal is ordered to be restored to file.

Records having been received. List this matter for hearing on 11.01.2010, as requested by Sri Shivakumar Malipatil, learned Counsel for the appellant.

Sd/-
JUDGE

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JUDGE
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JUDGE

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