

*

IN THE HIGH COURT OF DELHI

+

FAO No.360/2001

DSIDC

..... Appellant

through: None.

VERSUS

R.P.Gupta

..... Respondent

through : None.

DATE OF DECISION:

%

26.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Vide order dated 25.4.2001 the learned Trial Judge has dismissed an application under Order 9 Rule 13 CPC filed by the appellant.

2. Vide said application the ex-parte judgment and decree dated 14.10.1999 was sought to be got recalled.

3. In brief, relevant facts are that an award was filed in the Court and taking cognizance of the award notice of filing of the award in the Court was issued to the claimant and the respondent. The appellant was the respondent. The notice of

filing of the award was issued on 24.8.1999 notifying that the matter would be taken up by the Court on 14.10.1999. On 9.9.1999, within 30 days of receipt of notice of filing the award in the Court, objections to the award were filed by the appellant.

4. Needless to state such objections were required to be placed by the Ahlmad of the Court in the main file in which the award was kept and in respect whereof Court notice was issued to the parties of award being filed in the Court.

5. The counsel for the appellant remained under the bona fide belief that the objections would be taken up for consideration on 14.10.1999. She went to the Court on said date but learnt that the objections were not tagged on to the main file. That the objections were dismissed in default on 12.10.1999.

6. Notwithstanding the aforesaid facts being brought to the notice of the learned Judge holding that there were no objections before the learned Judge and that since 30 days time had lapsed within which objections could have been filed the award was made a rule of the Court.

7. Appellant filed an application under Order 9 Rule 13 CPC pointing out the afore-noted facts. Relying upon a decision of the Division Bench of this Court reported as 1995

(1) ALR 474 UOI vs. R.S.Sharma the application has been dismissed.

8. I am afraid, the decision of this Court relied upon is not applicable in the facts and circumstances of the instant case.

9. In R.S.Sharma's case (supra) it was held that where a party is served with a notice of filing of the award but does not file objections to the award within the period prescribed i.e. 30 days and in said eventuality the award is made a Rule of the Court, such an order is not akin to an ex-parte decree.

10. In the instant case, objections were filed to the award within limitation. Due to the default committed by the Court staff the objections were not tagged on to the main file. The objections were dismissed in default on 12.10.1999. As noted above, notice of filing of the award in the Court was issued on 24.8.1999 with further information to the parties that the matter would be considered by the Court on 14.10.1999. Thus, the learned Trial Judge ought to have kept the objections for consideration on 14.10.1999. It is not a case where no objections were filed. It is a case of proper objections being filed but being dismissed in default on account of default of the Court. The instant decree has therefore to be treated as akin to an ex-parte decree.

11. The maxim *actus curiae neminem gravabit* means that an act of a Court shall prejudice no man. Even on said principle, since the Court was at fault, corrective action ought to have been taken by the learned Judge.

12. I allow the appeal. Impugned order dated 5.4.2001 is quashed. Appellant's application under Order 9 Rule 13 CPC is allowed. The ex-parte judgment and decree dated 14.10.1999 is set aside. The objections to the award filed by the appellant which was dismissed on 12.10.1999 are also restored. Order dated 12.10.1999 is also quashed.

13. The learned Trial Judge is directed to re-decide the objections on merits.

14. Since none appeared for either party at the hearing today, the learned Trial Judge before whom the proceedings would be revived is directed to issue notice to the parties and thereafter re-decide the matter in accordance with law.

15. No costs.

16. TCR be returned forthwith.

26th March, 2008

PRADEEP NANDRAJOG, J.