

*

IN THE HIGH COURT OF DELHI

+

FAO No.175/2004

M/s.Rachna Metal Industries Pvt. Ltd. Appellant
through: Mr.B.L.Garg, Adv.

VERSUS

M/s.Survi Projects Respondents
through : Mr.Harish Malhotra, Sr. Advocate
with Mr.Tanuj Khurana, Adv.

%

DATE OF DECISION:
27.03.2008

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. Heard learned counsel for the parties.
2. The appellant is aggrieved by the fact that appellant's application under Order 9 Rule 13 CPC has been dismissed vide impugned order dated 21.5.2004.
3. Facts relevant for determination in the instant appeal are that the respondent filed a suit for recovery against the appellant on the Original Side of the Delhi High Court for the

reason when suit was filed pecuniary jurisdiction relatable to the claim was of the Delhi High Court. Impleaded as a defendant, appellant was duly served with summons in the suit. A written statement was filed. Issues were struck. 19.2.2003 was the date notified for plaintiff's evidence. On said date, none appeared for the appellant in spite of the fact that the matter was called out twice. The appellant was accordingly proceeded against ex-parte with a direction to the plaintiff to lead evidence by affidavit. The matter was adjourned to 19.5.2003. On said date Presiding Officer was on leave. The Reader attached to the Court adjourned the matter to 19.8.2003.

4. As per order sheet dated 19.5.2003 presence of one S.N.Pandey has been recorded as the counsel for the plaintiff. But as a matter of fact, a fact asserted by the appellant himself, Sh.S.N.Pandey was counsel for the appellant and his presence was wrongly marked as that for the plaintiff. Meaning thereby, that on 19.5.2003 counsel for the appellant was present when the Reader of the court adjourned the matter for 19.8.2003.

5. On 19.8.2003 Shri H.S.Pandey, Advocate appeared for the defendant. Shri O.P.Singh, Advocate appeared for the plaintiff. In the interregnum, i.e. between 19.5.2003 and

19.8.2003 the pecuniary jurisdiction of civil courts in Delhi was changed. For money claims upto Rs.3 lacs jurisdiction was vested in Civil Judges. Beyond 3 lacs and up to Rs.20 lacs jurisdiction was vested in the District Judge. Beyond 20 lacs jurisdiction continued to be of the Delhi High Court. The sum claimed in the suit being Rs.8,92,022/-, an order was passed on 19.8.2003 directing that the suit be transferred to the learned District Judge. Parties were directed to appear before the learned District Judge on 5.11.2003.

6. It is obvious that Shri H.S.Pandey who appeared for the appellant on 19.8.2003 had notice of not only the suit being transferred to the District Judge but was also notified that parties had to appear before the learned District Judge on 5.11.2003.

7. On 5.11.2003 none appeared for the appellant before the learned District Judge. Counsel appeared for the plaintiff. Matter was assigned to a learned Additional District Judge on same day. The learned Additional District Judge recorded ex-parte evidence led by the plaintiff and decreed the suit on 24.2.2004.

8. Application under Order 9 Rule 13 CPC was filed stating that the court (transferee) ought to have issued a court notice after suit was transferred. It was stated that the

appellant bona fide believed that the appellant would receive a notice from the transferee court.

9. In response, plaintiff informed the court that there was no requirement of law that a transferee court has to issue fresh notice to the parties, more so, when on transfer of a suit, on account of change in pecuniary jurisdiction date was notified to appear before the transferee court. It was additionally stated that not only on said count defendant has no cause but additionally there is another count on which defendant has no cause. The additional count stated was that when the transferee court required the plaintiff to file ex-parte affidavit by way of evidence, by way of precaution, under speed post the plaintiff posted the said affidavit by way of evidence to the appellant, in caption whereof the name of the court (transferee) was intimated. It is further urged that in the said affidavit by way of evidence the next date of hearing i.e. 11.2.2004 was also notified. A.D. card evidencing receipt of the affidavit by the appellant was relied upon.

10. The learned Trial Judge has dismissed appellant's application under Order 9 Rule 13 CPC rejecting both pleas urged by the appellant.

11. In view of the fact that when suit was transferred from the Original Side of the Delhi High Court on 19.8.2003,

next date for appearing before the transferee court i.e. 5.11.2003 was notified in presence of learned counsel for the parties it has been held that there was no need for the transferee court to issue fresh notices to either party, more so for the reason, the appellant had been proceeded against ex-parte on 19.2.2003 and no application was filed for setting aside of the said order. Additionally, it has been held that the appellant would have got knowledge of the suit being listed in the transferee court when appellant received the postal docket containing the affidavit by way of evidence filed by the plaintiff. The learned Judge noted that the A.D. receipt of the docket transmitted by speed post had been placed on record by the plaintiff.

12. Findings pertaining to the second plea of the appellant as recorded by the learned Trial Judge may be reproduced. They read as under :-

“This is not the end of the matter. It is pointed out by Id. Counsel for the plaintiff that when the plaintiff filed affidavit by way of evidence, he even sent a copy of the affidavit to the defendant vide speed post. The receipt of speed post has already been placed on record and the address mentioned in the speed post is the same address which is mentioned on the affidavit of the defendant. Under the circumstances, even when the defendant received this affidavit, he must have to know that the next date of hearing is 11.2.2004 and the matter is pending in this court. Even at that time, no attempt was made by him to appear in the court and

participate in the proceedings.”

13. I have gone through the memorandum of appeal. Indeed, learned counsel for the appellant concedes that in the entire body of the appeal not a word of explanation nor a ground has been urged pertaining to the finding of the learned Trial Judge as noted hereinabove in the preceding para.

14. In my opinion, said finding which has not been challenged is enough to hold against the appellant that the appellant was highly negligent in not pursuing the defence and that when appellant received the necessary affidavit by way of evidence intimating the name of the transferee court as also the next date of hearing, whatever be the previous default, at least on receipt of the postal docket appellant ought to have taken remedial measures.

15. I concur with the view taken by the learned Trial Judge that no sufficient cause has been shown entitling the appellant to have the ex-parte decree being recalled.

16. The appeal is dismissed.

17. Pursuant to the order dated 31.5.2004 if appellant has deposited Rs.4.25 lacs in this Court the same would be paid over by the registry together with accrued interest if any thereon to the respondent. The cheque would be handed over to the counsel on record for the respondent. If the amount has

been deposited by means of an FDR the same would be endorsed in favour of the respondent.

18. No costs.

March 27, 2008
vg

PRADEEP NANDRAJOG, J.