

*** HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: December 23, 2009

+ FAO No. 9/2007

DDA Appellant

-versus-

ISHWAR CHAND Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Bansal, Advocate

For the Respondent : Mr D.K. Agarwal, Sr. Advocate with Mr. Suryakant Singla,
Advocate

CORAM:-

HON'BLE MS. JUSTICE VEENA BIRBAL

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

VEENA BIRBAL, J.

1. Present appeal has been filed under Order 43 Rule 1 (d) of CPC against impugned order dated 29.08.2006 whereby learned Additional District Judge, Delhi has dismissed the applications filed by the appellant under Order 9 Rule 13 of CPC and Section 5 of Limitation Act.
2. Briefly the facts relevant for the disposal of present appeal are as under:-

Two suits were filed by respondent/decree holder against appellant/Judgment Debtor. The first suit was filed by respondent/decree holder in the year 1991, i.e. Suit No. 497/1991 against appellant/decree holder whereby respondent/decree holder had sought decree of permanent injunction in his favour restraining appellant/Judgment Debtor, its employees, agents not to dispossess respondent/decree holder from suit property measuring about 1489 sq. yds. situated in Khasra No. 357/2, in the revenue estate of Salempur, Mazra Madipur, Delhi. The said suit was filed before Sub Judge, 1st class, Delhi. The other suit, i.e. Suit No. 4658/1992 was filed before this court about the same suit property wherein decree of permanent injunction was sought restraining appellant/Judgment Debtor from demolition of any part of structure existing on aforesaid suit property. Both the cases were consolidated vide order dated 23.05.2002 of this court. Due to increase in pecuniary jurisdiction of this court, the aforesaid suits vide order dated 11.09.2003 of this court were transferred to learned District Judge, Delhi. The panel advocate of appellant who was contesting the said cases, vide letter dated 11.09.2003 returned the files to Chief Legal Advisor, DDA for entrusting the cases to some other lawyer. On 24.09.2003, the Chief Legal Advisor assigned the case to Sh. Ashish Sharma, Advocate. Power of Attorney was also signed by the competent authority in favour of said lawyer. It is alleged that the said counsel did not inform the progress of the case after its entrustment. Thereupon, the Senior Legal Officer/Land Management of appellant wrote a letter dated 20.09.2004 enquiring about the status of the said cases. The said lawyer informed that he could not find

the said cases in the list of transferred matters despite efforts made by him and as such returned the file on 29.09.2004 to the office of Sr. Legal Officer/Land Management. Thereupon, the file was sent to JLO for supplying the necessary details of the said cases. On 29.10.2004, JLO of appellant furnished complete details by informing that the said cases were assigned to Sh. D.S. Pawaria, learned Addl. District Judge, Delhi. On 02.11.2004, the said cases were assigned by the appellant to another panel lawyer for furnishing the status of the cases. On 16.11.2004, panel lawyer informed the Senior Legal Officer of appellant that the court of Sh. D.S. Pawaria, learned ADJ had passed an ex parte judgment/decreed in the matter. Thereafter, certified copy of ex parte judgment/decreed was applied through concerned official of department. On 13.12.2004, the certified copy of judgment and decree dated 31.07.2004 was made available. Thereupon, the matter was sent for legal opinion of panel lawyer. The panel lawyer was not available for few days as he was out of station. On 06.01.2005, legal opinion was received in the matter. Thereupon, file was routed through various channels, i.e. OSD (Land Management), Senior Legal Officer (Land Management), Deputy Legal Advisor (Land), Chief Legal Advisor, CIM, CLA, Senior Legal Officer (Land Management) and CLM and it was decided to move an application for setting aside the ex parte judgment and decree dated 31.07.2004. Accordingly, the matter was entrusted to another panel lawyer by Chief Legal Advisor of appellant on 04.02.2005. The Power of Attorney was also got signed in favour of said lawyer and necessary papers were handed over. Thereafter, appellant moved separate

applications in the aforesaid two suits under Order 9 Rule 13 read with Section 151 CPC along with an application under Section 5 of Limitation Act.

3. Learned Addl. District Judge, Delhi dismissed the said applications vide impugned order dated 29.08.2006. Aggrieved with the same, present appeal is filed.

4. Learned counsel for appellant has contended that the appellant has shown 'sufficient cause' in not appearing before the learned Additional District Judge, Delhi when the aforesaid cases were listed for hearing. It is contended that earlier the said cases were pending before this court and were assigned to Mr Anil Sapra, Advocate. It is contended that when the said cases were transferred to District Judge, Tis Hazari, Delhi, the said counsel returned the case files. Thereafter, another panel lawyer was engaged by the appellant who did not inform the progress of the matters upto 29.09.2004 and ultimately returned the files to appellant/ Judgment Debtor. Thereupon, the concerned official of appellant/Judgment Debtor made necessary inquiries about the said cases and came to know that the said cases were assigned to the court of Sh. D.S. Pawaria, ADJ, Delhi and as such another panel lawyer was engaged who on inquiries came to know on 16.11.2004, that an ex parte judgment and decree dated 31.07.2004 had been passed in the matter. It is contended that immediate steps were taken for obtaining certified copy of aforesaid ex parte judgment/decreed and after receipt of the same, legal opinion was taken in the matter. It is contended that thereafter separate applications were moved in aforesaid cases for setting aside of ex

parte judgment/decree dated 31.07.2004 along with application for condonation of delay giving all the necessary details. It is contended that sufficient cause was stated in the said applications and delay was also properly explained. Despite that, learned ADJ had dismissed the applications on the ground that the DDA has merely passed buck from one officer to another which is not sufficient to set aside the decree and the judgment. It is contended that learned trial court has gone wrong in asking the appellant to explain each and every day's delay. In support of his contention, he has relied upon: (1) **Union of India v R.P. Builders : 1994 INDLAW DEL 268 [DELHI HIGH COURT]**, (2) **Special Tehsildar, Land Acquisition, Kerala v K.V. Ayisumma : (1996) 10 Supreme Court Cases 634** , and, (3) **Collector, Land Acquisition, Anantnag and Another v Mst. Katiji & Ors. : (1987) 2 Supreme Court Cases 107.**

It is further contended that in the present case, respondents have grabbed the Government land. Ld. Additional District Judge, Delhi ought to have seen the nature of the case while disposing the applications for setting aside of ex parte judgment/decree.

5. On the other hand, learned counsel for the respondent has argued that no sufficient cause is shown by the appellant and learned ADJ has rightly rejected the applications by passing impugned order dated 29.08.2006. Merely because appellant is a Government body is no ground to condone the delay. It is submitted that there was a delay of 212 days in moving the application for setting aside of ex parte decree and judgment. Counsel for the respondent has relied upon:- (1) 114 2004 DLT 508, (2) 118 2005 DLT

286, (3) 1998 IV AD Delhi 221 and has prayed that present appeal be dismissed.

6. I have considered the submissions made and perused the material on record.

7. Order 9 Rule 13 CPC empowers the court to set aside ex parte judgment/decreed on being satisfied that the appellant was prevented by sufficient cause for appearing in the matter on the date fixed. The words “sufficient cause” have not been defined in the CPC. Broadly speaking, the same mean “good, adequate or sound cause”.

In **Collector, Land Acquisition, Anantnag and Another v Mst. Katiji and Ors., AIR 1987 Supreme Court Cases, 107,** the Supreme Court reiterated that liberal approach ought to be adopted in considering the expression ‘sufficient cause’ to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. It is also held in the aforesaid case that court should lean towards substantial justice to the parties by disposing of the case on merits.

In **Rafique and Anr. v Munshi Lal and Anr., AIR 1981 Supreme Court 1400,** Supreme Court while interpreting the expression “sufficient cause” in the context of non-appearance of an advocate engaged by the party in an appeal held that if the party had done everything that needed to be done in the matter, a default in appearance on the date when the matter was taken up for hearing should not be a ground for refusing restoration.

In **State of Haryana v. Chandramani and Others : (1996) 3 SCC 132,** it is held that when State is applicant, a liberal approach is to be

adopted as Government machinery has its own system.

In **M.K. Prasad v P. Arumogam**, reported in (2001) 6 SCC 176, it has been held that court ought to keep in mind the judgment impugned, the extent of property involved and stake of parties while deciding application under Order 9 Rule 13 CPC.

8. In the present case, it is seen that the two suits mentioned above were filed by the respondent/decree holder against appellant/JUDGMENT DEBTOR seeking decree for permanent and mandatory injunction. Perusal of record shows that the respondent/decree holder had filed one Suit, i.e. Suit no. 497/1991 before Sub Judge, 1st class, Delhi and the other Suit no. 4658/1992 was filed in this court. Order of consolidation was passed by this court in Suit no. 4658/1992 on 23.05.2002. On the basis of statement of counsel for the parties recorded therein, Suit no. 497/1991 was received from the District Court, Delhi and was treated as the leading case. Parties are contesting the aforesaid suits since 1991 and 1992 respectively. Thereafter, on 09.09.2003, due to increase in pecuniary jurisdiction of this court, the aforesaid suits vide order dated 09.09.2003 of this court were transferred to the court of District Judge, Tis Hazari, Delhi for assignment to the court of competent jurisdiction. No default of appearance of appellant is alleged prior to this date. It is only after the transfer of matter to District Judge, Delhi on 11.09.2003, there is non-appearance of appellant/Judgment Debtor. The stand of the appellant is that the panel lawyer who was conducting the said cases on behalf of appellant vide letter dated 11.09.2003 returned the file to CLA, DDA for re-entrustment to some other panel

lawyer. Thereafter, DDA had to entrust the said cases to another lawyer, namely, Sh. Ashish Sharma, Advocate. On 24.09.2003, Power of Attorney was signed by the competent authority in his favour. The said counsel did not inform the progress of the cases upto 29.09.2004. Thereafter, they had enquired the status from the panel lawyer who informed that the said cases were not listed in the cause list on date fixed, i.e. 05.11.2003 or other dates in the list of transfer matters despite best efforts made by him. The said lawyer also returned the file on 29.09.2004 to the office of Sr. Legal Officer/Law Manager of appellant. Thereafter, the said officer sent the file vide noting dated 30.09.2004 to JLO for finding the progress of the aforesaid cases. The said officer on 29.10.2004 furnished the details by informing that the said cases were assigned to the court of Sh. D.S. Pawaria, Ld. ADJ and thereafter, the matter was assigned to another panel lawyer on 02.11.2004 who informed that the court of Sh. D.S. Pawaria, Ld. ADJ had passed an ex parte judgment/decreed in the matter on 31.07.2004. In these circumstances, the appellant came to know about the said ex parte judgment/decreed only on 16.11.2004. Thereafter, necessary steps were taken for obtaining certified copy which could be received only on 13.12.2004. Thereafter, file was sent on 17.12.2004 for legal opinion of a panel lawyer who gave opinion in the matter only on 06.01.2005 as prior to this, he was out of station. Thereafter, file was routed through various channels in the office of appellant for taking necessary steps for moving appropriate application in the matter. On 04.02.2005, the matter was entrusted to a panel lawyer and consequently, two applications for setting aside of ex parte judgment/decreed along with

applications for condonation of delay were filed in the matter. All these averments have been stated in the application under Order 9 Rule 13 read with Section 151 CPC before Ld. ADJ which is supported with affidavit of Sh. B.S. Bajaglan, DDA who is working there as OSD (Land Management). The above shows that only after the transfer of the matter to District Judge, Tis Hazari Court, Delhi, due to change in the pecuniary jurisdiction, there has been default in appearance in the matter on behalf of appellant. The parties are litigating since 1991 and 1992. No default has been alleged prior to this. Various steps taken by the appellant after the transfer of the said cases to District Judge, Delhi shows that appellant has been vigilant in making enquiries from the concerned lawyer to whom the said cases were entrusted. Their panel lawyer, to whom the cases were entrusted, informed that he could not find the matter in the list of transfer cases and thereafter returned the case files. Immediately, on coming to know, appellant engaged another lawyer who informed about passing of ex parte judgment/decreed dated 31.07.2004. Thereafter, necessary steps have been taken.

Perusal of record shows that appellant had done everything that was needed to be done in the matter, i.e. new lawyer was engaged for District Court, Delhi and vakalatnama was also signed in his favour. Despite that, the lawyer had not appeared. Inquiries have also been made by appellant/Judgment Debtor from time to time to know about the progress in the matter. Under these circumstances, appellant should not suffer due to lapse on the part of the lawyer. Further, steps taken by the appellant/Judgment Debtor as noted above also shows that they had perused the

matter. There is no lack of bona fide or inaction or negligence on the part of DDA. Under these circumstances, appellant should not be allowed to suffer due to lapse on the part of their lawyer as has been held in **Rafique and Anr. v Munshi Lal and Anr.** (supra).

9. It is contended that on 19.07.2004 and 24.07.2004, court had informed Mr. Nahar Singh, clerk of DDA about the matter. It is not shown as from which department of appellant the said clerk had appeared. Ld. counsel for DDA has submitted that department is contemplating disciplinary action against the said clerk. Further, valuable rights of the parties are to be determined. As per stand of the appellant, present is a case of Government land which has been allegedly grabbed by the respondent and there is no evidence about the ownership of the land of respondent on record whereas learned counsel for the respondent has denied the same. Since valuable rights of the parties are to be determined, the Ld. Additional District Judge, Delhi ought to have kept the same in mind while passing impugned order as has been held in **M.K. Prasad v P. Arumogam** (supra). The impugned order passed by the Ld. Additional District Judge, Delhi is too harsh to be legally sustained. Appellant has been able to show sufficient cause in not appearing in the matter on the date fixed. Keeping in view the nature of controversy and consequences that would flow in not allowing the application for setting aside of ex parte judgment/decreed, setting aside of impugned order would subserve the ends of justice.

10. The appeal is allowed by setting aside impugned order dated 29.08.2006 passed by the Ld. Additional District Judge, Delhi. The

appellant's applications for condonation of delay and for setting aside of ex parte judgment/decreed stand allowed, subject to payment of cost of Rs. 25,000/- to be paid to the opposite party within a period of 30 days.

Parties to appear before the Ld. ADJ on 28.01.2010.

VEENA BIRBAL, J.

December 23 , 2009
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