

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No. 641/2008

29th September , 2014

.....Petitioner

Through: Mr. Davinder Singh, Sr. Adv. with
Mr. Saurabh Tiwari, Advocate.

VERSUS

..... Respondents

Through: Mr. Anil Soni, CGSC and Mr.
Naginder Benial, Adv. for R-1.

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India impugns the order of the trial court dated 19.3.2008 by which the trial court has allowed the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) filed by the Union of India/respondent no.1/defendant no.1 in the suit and has set aside the *ex parte* judgment and decree dated 10.8.2005 subject to payment of costs of Rs.10,000/- to the petitioner/plaintiff.

2. The facts of the case are that the petitioner/plaintiff filed a suit for recovery of Rs. 12,70,065/- against three defendants namely Union of India/defendant no.1, Trade Fair Authority of India/defendant no.2 and Tata Exports Limited/defendant no.3. This suit was filed in the original side of this Court and in which Union of India appeared. After completion of pleadings, the case was listed for petitioner's evidence and from 1998 to 2003, the matter continued for plaintiff's evidence when due to change of pecuniary jurisdiction the suit was transferred to the District Court and parties were to appear before the District and Sessions Judge on 5.12.2003. However, the order of transfer was not passed in the presence of the parties and was in fact passed not on the date fixed in court but on a preponed date on which the case was taken up by the Joint Registrar and thus which date was not to the notice of the Union of India. After the suit was transferred to the District Court, again admittedly, the transferee court did not issue any court notice to the Union of India/defendant no.1. The *ex parte* judgment and decree was thereafter passed on 10.8.2005.

3. The case of the respondent no.1/defendant no.1 in the application under Order IX Rule 13 CPC was that they came to know about the decree when execution proceedings were filed on 10.8.2006. It was

pleaded that respondent no.1 did not have the necessary records and it took time to get information from the External Affairs Ministry/Indian Embassy at Tehran. After the necessary information was not obtained, in fact then certified copies of the file was applied for as also inspection of the court file and thereafter the application under Order IX Rule 13 CPC was filed on 29.3.2007.

4. The trial court by the impugned judgment has in the peculiar facts of the present case held that the suit was transferred in the absence of and without notice of the respondent no.1 by the Joint Registrar on a preponed date, which date the respondent no.1/defendant no.1 was hence not aware of, and no notice was even issued by the transferee court to the respondent no.1. Hence the court below has set aside the *ex parte* judgment. Reliance has been placed in the impugned order upon the judgment of the Supreme Court in the case of ***N. Balakrishnan Vs. M.Krishnamurthy AIR 1999 (1) Civil Court Cases 12(SC)*** that there is no presumption that delay in approaching the court is deliberate and that courts should be liberal in condoning the delay once there is no *malafide* or gross negligence. The relevant observations of the Supreme Court relied upon by the court below in ***N. Balakrishnan's*** case (*supra*) read as under:-

“Rules of Limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of Limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During the efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending un-certainty and consequential anarchy. Law of Limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy tactics but seek their remedy promptly. The idea is that very legal remedy must be kept alive for a legislative fixed period of time.

A Court knows that refusal to condone delay would result in foreclosing suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* AIR 1969 SC 575 and *State of West Bengal Vs. The Administration, Howrah Municipality* AIR 1972 SC 749”.

5. I completely agree with the observations made in the impugned order because the facts of the present case are very peculiar because the respondent no.1/defendant no.1 had no notice whatsoever of the transfer of the suit to the District Court from the original side of this Court; transfer was on the date which was not the date fixed to the notice of the parties, in fact was a preponed date; and the transferee court never issued any notice to the

respondent no.1/defendant no.1 to appear in the suit before the transferee court. Some amount of leeway is always available to the Union of India, more so when no records were available with it and time was taken to take the records firstly from the External Affairs Ministry/Indian Embassy at Tehran and thereafter applying for the certified copy of the record and inspection of the court record.

6. Learned senior counsel for the petitioner places reliance upon the judgment of the Supreme Court in the case of *Sunil Poddar & Ors. Vs. Union Bank of India 2008 II AD (S.C.) 247* to argue that there was no need for the transferee court to issue notice and it is argued that it was the duty of the Union of India/defendant no.1 to appear in the transferee court. In support of the arguments reliance is placed upon para 11 of the judgment and I am reproducing para 11 below, however, I am also reproducing para 10 of the judgment as under:-

“10.The learned Counsel for the respondent-Bank, on the other hand, supported the order passed by the DRT, confirmed by the DRAT as well as by the High Court. An affidavit-in-reply is filed by Senior Manager (Law) of the respondent-Bank, wherein it was submitted that the appellants were aware of the proceedings initiated by the Bank against them. In civil suit, the appellants were joined as defendant Nos. 7-9. They appeared before the Court through an advocate and filed written statement in March, 1995. They also raised preliminary objections by filing applications, requesting the Court to treat the issues as to maintainability of suit and liability of the appellants as preliminary issues. It was,

therefore, clear that they were served with the summonses and were in know of the proceedings. It was thereafter their duty to take care of their interest, when the suit was transferred to DRT, Jabalpur. It was further stated that summonses were issued to the appellants at the addresses at which they were earlier served. In fact, according to the respondent-Bank, it was the same address which was given by the appellants themselves before both the Tribunals and before the High Court. But with a view to deprive the Bank of the legitimate dues and to delay the proceedings initiated against them, they did not appear before the DRT. Though it was not necessary for the Bank to serve the appellants once again, they made a prayer to the Bank to get the summonses published in a newspaper which was done and in "Navbharat Times", Bombay as well as "Navbharat Times", Raipur summonses were published. "Navbharat Times" is having very wide circulation at both the places, i.e. Bombay as well as at Raipur. It was, therefore, not open to the appellants to contend that they were not subscribing and/or reading a Hindi newspaper by producing a bill from a newspaper agent. Such a bill can be obtained from any vendor. No reliance can be placed on such evidence. Moreover, an extremely important fact which weighed with both the Tribunals as well as with the High Court was that in an application under Section [22\(2\)\(g\)](#) of the Act for setting aside ex parte order passed by DRT, the appellants have suppressed material and extremely important fact that they had appeared before the Civil Court and had filed written statement. The application proceeded on the footing as if the appellants were never aware of any proceedings initiated against them by the plaintiff-Bank. The DRT was, therefore, wholly right in dismissing the application and the said order was correctly confirmed by the DRAT and by the High Court. No case can be said to have been made out by the appellants to interfere with those orders and the appeal deserves to be dismissed.

11. Having heard the learned Counsel for the parties, in our opinion, the appellants have not made out any ground on the basis of which the order passed by the DRT, confirmed by the DRAT and by the High Court can be set aside. From the record, it is clearly established that the suit was instituted by the plaintiff-Bank as early as in August, 1993. The appellants who were defendant Nos. 7 to 9 were aware of the proceedings before the Civil Court. They appeared before the Court, engaged an advocate and filed a written statement. They raised preliminary objections as also objections on merits. They filed applications requesting the Court to raise certain issues and try them as preliminary issues. It was, therefore, obligatory on their part to appear before the DRT, Jabalpur when the matter was transferred under the Act. The appellants, however, failed to

do so. We are not impressed by the argument of the learned Counsel for the appellants that they were not aware of the proceedings before the DRT and summonses could not be said to have been duly served. As is clear, summonses were issued earlier and on the same address, summonses were sought to be served again after the case was transferred to DRT, There is substance in the submission of the learned Counsel for the respondent-Bank that the appellants had avoided service of summons as they wanted to delay the proceedings. We are also inclined to uphold the argument of learned Counsel for the Bank that in view of the fact that the appellants were appearing before the Civil Court, it was not necessary for the Bank to get summonses published in a newspaper after the matter was transferred in accordance with law to the DRT, Jabalpur. But even that step was taken by the respondent-Bank. In "Navbharat Times", a Hindi newspaper having wide circulation in Bombay and Raipur, summonses were published. It cannot be argued successfully that the appellants were not the subscribers of the said newspaper and were not reading "Navbharat Times' Hindi Edition. But even otherwise, such contention is wholly irrelevant. As to bills said to have been produced from the newspaper agent, to us, both the Tribunals were right in observing that such a bill can be obtained at any time and no implicit reliance can be placed on that evidence. It is immaterial whether appellants were subscribers of the said newspaper and whether they were reading it. Once a summons is published in a newspaper having wide circulation in the locality, it does not lie in the mouth of the person sought to be served that he was not aware of such publication as he was not reading the said newspaper. That ground also, therefore, does not impress us and was rightly rejected by the Tribunals" (underlining added)

7. A reading of the aforesaid paras shows that learned senior counsel for the petitioner is not correct in relying upon the judgment in the case of *Sunil Poddar (supra)* because in that case after transfer of the suit by this Court to the DRT, summons were issued by the DRT at the addresses of the defendants in the case, but defendants were found to be avoiding service and had changed their address without putting back to notice. After

endeavour was made to serve the defendants in the suit before the DRT in the ordinary method, thereafter summons were served by publication. Therefore, the facts in the case of *Sunil Poddar (supra)* are distinguishable because the transferee court had issued a notice to the defendant in the suit before the DRT and in fact had thereafter got the defendants served through publication. Supreme Court in para 11 only refers to the fact that there was no requirement of publication of the summons in the newspaper and there are no observations in the judgment in the case of *Sunil Poddar (supra)* that the transferee court did not have to issue any notice to the defendants. Therefore, the judgment in the case of *Sunil Poddar (supra)* will not apply to the facts of the present case.

8. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 29, 2014
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VALMIKI J. MEHTA, J.