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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 11th February, 2015

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FAO. 204/2007 & CM.APPL 7227/2007

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Mr.Pradeep Gaur, Advocate

versus

HOSHIAR SINGH & ORS

..... Respondents

Through: Mr. S.K. Verma, Advocate for
Respondent no.1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This appeal is directed against the order dated 15.03.2007 whereby an application under Order 9 Rule 9 of the Code of Civil Procedure, 1908 (CPC) for restoration of the application under Order 41 Rule 19 CPC was dismissed by the learned Additional District Judge(ADJ). It may be noted that the appeal before the ADJ was filed by the Appellant Insurance Company in May, 2005. Notice of the appeal was ordered to be issued to the Respondents by an order dated 04.06.2005. In pursuance of the notice, Respondent no.2 put in appearance as is reflected

from the order passed by the learned ADJ dated 02.08.2005. The Appellant however, did not take any steps for issuance of notice to Respondent no.1 for 20.09.2005 or 30.11.2005. On 17.01.2006, it was noted by the learned ADJ that although steps have not been taken by the Appellant for service of the notice, yet Respondent no.1 was present in the connected appeal and Respondent no.1 accepted notice in the instant appeal. None appeared on behalf of the Appellant on 14.02.2006. Consequently, the appeal was dismissed in default.

2. An application under Order 41 Rule 19 CPC was moved. When the application was listed for hearing on 18.03.2006, none appeared on behalf of the Appellant. Consequently, the application came to be dismissed by order of even date.
3. Another application under Order 9 Rule 9 CPC was filed which was listed before the Court on 24.04.2006 on which notice was ordered to be issued to the Respondents. A perusal of the Trial Court record reveals that none appeared on behalf of the Appellant on 22.05.2006, 18.07.2006 and 24.07.2006. On 28.08.2006, Respondent no.1 appeared in person. It was reported that Respondent no.2 had left the given address. On the request of the learned counsel for the Appellant, Respondent no.2 was ordered to be served again through publication.
4. By the impugned order dated 15.03.2007, the entire conduct of the Appellant was noted. The learned Additional District Judge

noted the conduct of the Appellant and found that the factual averment that junior counsel got held up in traffic jam and reached the Court late was not truthful. It was observed that if the counsel could not reach on the said date, nothing prevented the Appellant to move the application on the next day or even within one week. The learned Additional District Judge therefore, found that the Appellant had failed to disclose sufficient cause for restoration of the application for readmission of the appeal. Consequently, the application for restoration of appeal and the application for restoration of the application for readmission of appeal was dismissed.

5. I have myself noted the Appellant's conduct. It is evident that the Appellant was pursuing the appeal casually and has failed to disclose sufficient cause for restoration of the application for readmission of the appeal.
6. No interference is called for in the impugned order.
7. The appeal is accordingly dismissed.
8. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 11, 2015

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