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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 160/2005 and CM No.7653/2015 (condonation of delay of 1601 days in filing CM No.2097/2015 for restoration of appeal) and CM No.2097/2015 (restoration of appeal)

GULSHAN JIT SINGH

..... Appellant

Through: Mr. J.P. Sengh, Sr. Advocate with Ms. Sana Ansari and Ms. Vanessa Singh, Advocates

versus

JASWINDER SINGH & ORS.

..... Respondents

Through: Mr. Sumit Sinha, Advocate for R-5

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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16.09.2015

1. This is an appeal preferred against the order dated 26.04.2005 passed by the Additional District Judge, Tis Hazari Courts, Delhi. The impugned order was passed on an application moved under Order 39 Rule 2 A of the CPC by the appellant.

2. Being aggrieved, the instant appeal has been preferred.

3. The broad facts, in the background of which, the present appeal has been filed, are as follows :-

3.1 The appellant / plaintiff had filed a suit for recovery against respondent no.1 to 4 for a sum of Rs.6,02,000/-. In that suit, an interlocutory application under Order 39 Rules 1 & 2 of the CPC was filed, which was numbered as : IA No.4771/1997. The said suit

was filed on the original side of this court.

3.2 A learned single Judge of this court, vide order dated 26.05.1997, passed an ad interim injunction in favour of the appellant / plaintiff. The order passed, read as follows :-

“..Issue notice, returnable on 1/8/97. This is an application filed on behalf of the plaintiff under Order XXXVIII Rule 5 Order XXXIX Rules 1 & 2 read with Section 151 CPC. I have heard the learned counsel for the plaintiff and have also carefully gone through the averments made in the plaint, the contents of the application which is duly supported by an affidavit. After hearing the learned counsel for the plaintiff, I am satisfied that if an exparte interim order is not passed the very purpose of filing of the application would stand defeated by delay. The plaintiff as per the averments made in the application, is already in possession of rooms bearing nos.206 to 209 of the Sabina International Hotel at Bathinda. Status quo in respect of the possession of the above said rooms, as obtained today shall be maintained till the next date of hearing...”

(emphasis is mine)

3.3 It appears that the appellant / plaintiff became aware of the fact that respondent no.4 had taken a loan from respondent no.5. The appellant / plaintiff also became aware of the fact that respondent no.5 had initiated proceedings to recover the debt and, in that connection had taken out proceedings for taking over possession of the Sabina International Hotel (in short the Hotel) in which the suit property (i.e. rooms 206 to 209) was located.

3.4 The appellant / plaintiff on becoming aware of the aforesaid facts vide letter dated 23.08.1999, wrote to respondent no.5.

3.5 By virtue of this letter, the appellant / plaintiff informed the

Managing Director of respondent no.5 that he had filed a summary suit under Order 37 of the CPC against the respondent no. 1 to 4, and that, this High Court vide order dated 26.05.1997 had granted an ad interim injunction. The extract of the order was replicated in para 4 of the letter dated 23.08.1999.

3.6 In response to the said letter, respondent no.5 addressed a letter dated 07.09.1999 to the appellant / plaintiff. In the said letter, respondent no.5, broadly, took the following stand: Firstly, that the proceedings initiated by the appellant / plaintiff against respondent no.1 to 4 would not affect the rights of respondent no.5 as it had a mortgage in its favour qua the Hotel in which the suit property was located. The other aspect which was brought to fore by respondent no.5, was that, under the provisions of Section 29 of the State Financial Corporation Act, 1951 it had been invested with the power to acquire the Hotel and to realize its dues by effecting its sale.

3.7 Respondent no.5 also adverted to the fact that the order of this Court to which reference was made by the appellant / plaintiff, was on the face of it, to continue only till the next date of hearing, and that, respondent no.5, in the meanwhile, had already acquired the Hotel. Respondent no.5, however, conceded that, if any, surplus remained after the sale of the Hotel, the appellant / plaintiff could raise a claim qua the said amount towards the satisfaction of his dues. Pertinently, respondent no.5 disputed the claim of the appellant/plaintiff that the suit property was in his possession.

3.8. It appears that thereafter, till May 2000, the appellant /

plaintiff did not communicate with respondent no.5. However, on 30.05.2000, the appellant / plaintiff, once again, wrote to respondent no.5. By this letter, the appellant / plaintiff informed respondent no.5 that the court on 18.04.2000 had indicated that the interim order passed earlier, would continue till further orders.

4. It appears that in the interregnum, respondent no.5 had sold the Hotel and, in this behalf, entered into an agreement dated 31.03.2000.

5. It is, on account of the aforesaid facts that the appellant / plaintiff, moved an application with the trial court, as indicated above, under Order 39 Rule 2 A of the CPC.

5.1. Mr. Sengh, the learned senior counsel, has submitted that since respondent no.5 was aware of the subsistence of an injunction order qua the suit property, it could not have sold the Hotel, in which, the suit property was located without approaching the trial court and getting the necessary permission, in that behalf.

5.2. It is Mr. Sengh's submission that this court has powers to direct respondent no.5 to recoup the losses, which have visited the appellant / plaintiff on account of the actions of respondent no.5.

6. There is no representation on behalf of respondent no.1 to 4.

7. Mr. Sinha, however, appears on behalf of respondent no.5. The learned counsel submits that there is no merit either in the appeal or in the application for condonation of delay. It is contended by the learned counsel for respondent no.5 that there is, nearly, 4 years of delay in filing of the application for restoration of the

appeal.

7.1 It is further submitted that the reasons given in the application that the appellant / plaintiff suffered from various ailments is not backed by any medical record.

7.2 It is also contended by the learned counsel that after the appeal was dismissed in default on 04.08.2010, the appellant/plaintiff for some strange reason, sought to check the cause list, via the internet, only in 2011. There is no explanation, according to Mr. Sinha, as to why, in the interregnum, no attempt was made by the appellant / plaintiff to check the status of his case on the internet.

7.3 In other words, the contention of Mr. Sinha is that in testing the bonafides of the appellant, the explanation for the delay prior to 2011 should be examined, since, obviously, after the dismissal of the appeal on 04.08.2010, it would not show in the cause list displayed on the internet.

7.4 On merits, Mr. Sinha submitted that respondent no.5, had made its stand clear to the appellant / plaintiff in the letter dated 07.09.1999.

7.5 It is thus, the contention of the learned counsel that the submissions made on behalf of Mr. Sengh, are not tenable.

8. I have heard the learned counsel for the parties. I am of the view that though, undoubtedly, there was an interim injunction operating qua the suit property after this court had passed an order to that effect on 26.05.1997, respondent no.5 had conveyed its stand on the issue vide letter dated 07.09.1999. While, one cannot quibble

with the proposition that even a person, who is not a party to a proceedings is bound by a direction of the court once, the directive passed by the court comes to his knowledge, the issue, which, really arises for consideration is: as to whether in the given facts and circumstances of the case, a direction should be issued whereby, respondent no.5 should be asked to recoup the losses that may have visited the appellant / plaintiff.

8.1 As indicated above, clearly after 07.09.1999 when, the respondent took a stand that since, it was not party to the suit, the orders passed by the court would not affect its right as a mortgagee, especially, in the circumstances that it had powers available to it to realize its dues by triggering the provisions of the State Financial Corporation Act, no steps were taken by the appellant / plaintiff to move the trial court for enlarging the scope of the injunction. In fact after 07.09.1999, the only other letter addressed by the appellant / plaintiff to respondent no.5 is the letter dated 30.05.2000. By this time, respondent no.5 had already sold the Hotel in which the suit property was located. The sale took place, as indicated above, on 31.03.2000. Pertinently, the application under Order 39 Rule 2A filed around 12.09.2000; as is evident from the affidavit accompanying the application.

8.2 To my mind, where recoupment of losses is sought in proceeding under order 39 Rule 2A of the CPC, speed with which the aggrieved moves the Court is a crucial aspect of the matter, which enables the Court to come to a conclusion whether such a

relief ought to be granted.

8.3. Having regard to the aforesaid facts, I am not inclined to interfere with the impugned order for the reasons given hereinabove.

8.4 The appellant / plaintiff, I am told, has a decree in his favour qua respondent no.1 to 4; therefore, the best course open to the appellant / plaintiff would be, to execute the said decree and not to seek recoupment of the losses via respondent no.5.

9. In view of the above, according to me, application for condonation of delay and restoration of the appeal have been rendered inefficacious. The same are accordingly, disposed of.

10. With the aforesaid observations in place, the appeal and the pending applications are, accordingly, disposed of.

RAJIV SHAKDHER, J

SEPTEMBER 16, 2015

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