

*

HIGH COURT OF DELHI AT NEW DELHI

+

C.S. (OS) No.1415/2011

Decided on : 10.02.2014

ONKAR SWAROP BHATNAGAR AND ANR..... Plaintiff

Through: Mr.S.K.Sharma, Mr.Puneet Relan and
Mr.Prayas Aneja, Advs.

Versus

M/S DRISHTICOIN PROPERTIES PVT.LTD.& ANR.
... Defendant

Through: Mr.Sanat Kumar and Mr.Ajay Satija,
Advs.for D-1

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (ORAL)

OA No.15/2014

1. This is a chamber appeal against the order dated 20.11.2013.
The plaintiff is raising the grievance with regard to the orders passed on two IAs being IA No.2187/2013 filed under Section 151 CPC and IA No.837/2013 filed under Section 148 r/w Section 151 CPC for enlargement of time to file the written statement.

2. This is a suit for declaration and permanent injunction in which the defendant filed his written statement on 15.10.2011. Since there was a delay of 22 days in filing the written statement, an application under 148 r/w Section 151 CPC being IA No.837/2013 was filed seeking condonation of delay in filing the written statement. In the application, it was mentioned that the next date of hearing is 01.02.2013 and therefore the application may be listed on the said date.
3. The application had a chequered history as it was subjected to various objections by the registry. It is the case of the defendant No.1 that despite his having made a request to the Registry that the application be listed on 01.02.2013, the same was listed on 21.01.2013 and as the defendant No.1/appellant was ignorant about the same, consequently he did not appear on 21.01.2013 and the same was dismissed in default. On learning about the said dismissal of the application in default, the appellant filed another application being IA No.2187/2013 which was also listed before the court on 20.11.2013. In this application, a prayer was made for restoration of IA

No.837/2013 by virtue of which the condonation of delay of 22 days was sought in filing the written statement.

4. On 20.11.2013, the counsel for defendant No.1/appellant did not appear and consequently the court allowed the application on the submission made by the learned counsel for the plaintiff/respondent though subject to payment of cost of Rs.5,000/- and restored IA No.837/2013 seeking condonation of delay of 22 days in filing the written statement but so far as IA No.837/2013 is concerned, the same was dismissed on second call at 2.25 P.M. as the counsel for the defendant No.1 had again not appeared.
5. The present chamber appeal has been filed on account of two reasons. Firstly, on account of imposition of cost of Rs.5,000/- in allowing IA No.2187/2013 and secondly on account of dismissal of IA No.837/2013 seeking condonation of delay of 22 days in filing the written statement.
6. I have carefully gone through the record. The written statement stands already filed and the defendant No.1 while filing the application under Section 148 of CPC for enlargement

of time for filing of the written statement, it was specifically mentioned that the same be listed on 01.02.2013, the Registry seems to have inadvertently without noticing the said prayer of the defendant No.1, listed the application on 21.01.2013 because of which this problem has cropped up that is instead of listing the application on the date prayed, it was listed on a date of which the appellant was not aware. Consequentially, the application got dismissed. This necessitated in filing of an IA No.2187/2013 seeking restoration of IA No.837/2013. Neither the counsel for the defendant No.1 nor the defendant No.1 himself appeared when both these applications were taken up on 20.11.2013 which resulted in passing of the impugned order. A cost of Rs.5,000/- was also imposed on the defendant No.1 while allowing the application seeking restoration of IA No.837/2013.

7. The intent of law is not to punish a person for inadvertent default in appearing before the court, but to advance interest of justice. In the instant case, the explanation which has been furnished by the defendant No.1 for his non appearance on

20.11.2013 seems to be quite plausible. I am, therefore, inclined to condone the absence of the counsel or the defendant No.1 on 20.11.2013 and waive the cost of Rs..5,000/- which has been imposed while allowing IA No.2187/2013 seeking restoration of IA No.837/2013 which has subsequently been dismissed in default as the defendant No.1 was not present. Therefore, vide order dated 20.11.2013 not only cost of Rs.5,000/- was imposed on the defendant No.1/appellant, but also his application seeking condonation of delay of 22 days in filing the written statement was dismissed in default.

8. Taking a lenient view of the entire matter and rather than getting entangled in these technicalities, the appeal is allowed, the cost of Rs.5,000/- is waived, the IA No.837/2013 seeking condonation of delay of 22 days in filing the written statement is allowed and the same is taken on record. However, needless to say that as there is admittedly a delay of 22 days in filing the written statement and the plaintiff and his counsel have been put to inconvenience, therefore, the defendant No.1 must be burdened with cost of Rs.10,000/-. Accordingly, the appeal is

allowed subject to payment of cost of Rs.10,000/- and the order dated 20.11.2013 is set aside. Let the written statement of defendant No.1 be taken on record.

V.K. SHALI, J.

FEBRUARY 10, 2014
dm