

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

Decided on: 14th September, 2015

+ **C.R.P. No.133/2015**

ISHWAR SAINI

..... Petitioner

Through: Mr. Manish Kapur, Advocate

versus

M/S. VIDEOCON INDUSTRIES LTD. & ANR. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM APPL.18733/2015 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APP.18732/2015 (delay in re-filing) & CM APP.18734/2015 (delay in filing)

Delay of 20 days in filing and delay of 22 days in re-filing the revision petition is condoned as "sufficient cause" is shown.

Both the applications stand disposed of.

C.R.P. No.133/2015

1. This is a revision petition filed by the petitioner against the order dated 10.03.2015 by virtue of which the application of the

petitioner under Order IX Rule 13 CPC was dismissed as barred by limitation.

2. Briefly stated the facts of the case are that respondent M/s. Videocon Industries Limited filed a suit for recovery of Rs.13,16,115/- against Ishwar Saini, Proprietor M/s. Saini Electronics Palace, Rohini, Delhi. It was pleaded in the suit that the present petitioner-defendant (Ishwar Saini) on account of the business transaction owed the aforesaid amount to the respondent-plaintiff (M/s. Videocon Industries Limited) and since despite demand he had failed to pay the amount, consequently the suit for recovery along with interest @ 15% per annum was filed by M/s. Videocon Industries Limited. Notices were issued to Ishwar Saini, however, he did not put in appearance despite sufficient service and consequently was proceeded *ex-parte*. After recording of *ex-parte* evidence, a decree for a sum of Rs.13,16,115/- along with interest @ 15% per annum from the date of institution of the suit till realization of the amount was passed with proportionate costs by the learned Additional District Judge, North-West III, Rohini Courts, Delhi against the petitioner on 20.10.2011.

3. The petitioner (Ishwar Singh) filed an application under Order IX Rule 13 CPC for setting aside the *ex-parte* decree against him. It was alleged in the application that he learnt about the decree having been passed against him (the defendant) by a notice of execution proceedings on 10.11.2014. Thereafter, he filed an application under Order XXI Rule 26 CPC in the Court on 14.11.2014 for not only setting aside the order but also that the aforesaid decree was obtained by conspiracy. Accordingly, it was prayed that the decree be set aside. The petitioner also filed an application for setting aside the execution proceedings. The Court did not oblige the petitioner by setting aside the proceedings and as a consequence, the petitioner was constrained to file an application under Order IX Rule 13 CPC read with Section 151 CPC for setting aside the *ex-parte* decree.
4. The contention of the learned counsel for the petitioner is that the application for setting aside the *ex-parte* decree was dismissed by the learned ADJ without adhering the broad principles of law and also without taking into consideration the fact that the petitioner learnt about the decree only on 14.11.2014 and that too after sunset

when he was in the office. Accordingly, it is prayed that the present petition be allowed and the decree and judgment dated 20.10.2011 be set aside.

5. I have carefully considered the submission made by the learned counsel for the petitioner. The main contention of the learned counsel for the petitioner is that his application under Order IX Rule 13 CPC has been dismissed by the learned Judge as barred by limitation on the ground that there is no application filed under Section 5 of the Limitation Act seeking condonation of delay in filing an application under Order IX Rule 13 CPC. It has been contended by the learned counsel for the petitioner that filing of an application under Section 5 of the Limitation Act is not necessary in case the petitioner is able to show from the application under Order IX Rule 13 CPC or from the record that there was delay and that there was sufficient cause for the same prevented the petitioner from filing an application in time. For this purpose, the learned counsel for the petitioner has relied upon a judgment of this Court in *Universal Builders and Contractors v. Sheila Singh Uppal & Ors.*, 154 (2008) DLT 69 wherein it has been held that even

without there being a formal application under Section 5 of the Limitation Act, the Court is competent to condone the delay in case the same is being substantially advanced in the terms of reference of the petition or the accompanying documents filed on record.

6. I have carefully considered the submission and have gone through the record. There can be no dispute about the proposition of law laid down by the learned Single Judge of this Court wherein it has been categorically reiterated that filing of an application under Section 5 of the Limitation Act is not *sine qua non* for condonation of delay.
7. But the said case is of no assistance to the respondent in the present case as no ground for sufficient cause is reflected even from the averments made in the application under Order IX Rule 13 CPC. As a matter of fact, the application under Order IX Rule 13 CPC is curiously silent as to what prevented the petitioner from prosecuting the matter after service having been effected. The learned ADJ has referred to Article 123 of the Limitation Act and observed that the period of limitation within which the *ex-parte* decree deserves to be set aside is 30 days.

8. In the instant case, it is not in dispute that the present petitioner came to know about ex-parte decree having been passed against him on 20.10.2011 on 14.11.2014 itself. Yet, no steps were taken to prosecute the matter. Even if the petitioner is deemed to have been served with summons under Order XVI read with Section 151 CPC on 10.11.2014, still the application for setting aside the *ex-parte* decree has to be filed within a period of 30 days.
9. In the instant case, not only the petitioner learnt about the matter having been decreed against him on 14.11.2014 yet he filed the present application on 09.03.2015. According to Article 123 of the Limitation Act to which reference has been made by the learned ADJ, the application under Order IX Rule 13 CPC has to be filed within 30 days from the date of decree. Even if for the sake of argument the date of decree is assumed to be 14.11.2014, that is the date when he learnt about it, still the application has been filed after considerable delay of more than 100 days which is way beyond the prescribed period of limitation. As a matter of fact the decree has been passed in the year 2011 and calculated from the said date, the application is highly belated. Even when filing the

present appeal, the petitioner has shown his casual approach in as much as there is a delay of 20 days in filing the petition and 22 days in re-filing the revision petition which clearly shows that the petitioner is taking this for granted as if the delay will be condoned as a matter of course. This cannot be permitted to be done.

10. I do not find that there is any jurisdictional error or impropriety or illegality in the order of rejection passed by the learned ADJ. Accordingly, the revision petition is dismissed.
11. File be consigned to record room.

V.K. SHALI, J.

SEPTEMBER 14, 2015

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