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

+ **CM(M) 917/2016**

GURVINDER SINGH SACHDEVA Petitioner

Through Mr. Bidit Kumar Dekka, Advocate.

versus

STATE BANK OF INDIA AND ANR Respondents

Through Mr. Krishan Kumar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **06.10.2016**

CM No. 33613-14/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 917/2016 and CM No. 33612/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 31.03.2016 by which an application filed by the petitioner/defendant No.1 under Section 151 for setting aside ex parte order against the petitioner was dismissed.
2. A perusal of the application shows that it was the case of the petitioner that on 21.10.2014 on receiving a copy of the petition, he came to know that he has been proceeded ex parte. Hence, the present application under Section 151 CPC was filed for setting aside the ex parte proceedings dated 26.07.2012.

3. The trial court vide impugned order dated 31.03.2016 noted that the petitioner was proceeded ex parte on 26.07.2012 as despite service by way of publication, none had entered appearance. He allegedly became aware of the proceedings in October 2014. It further noted that no application has been filed for condonation of delay and hence, the application is liable to be dismissed on the ground of limitations.

4. This court has also in C.R.P. 132/2016 titled as ***PREM SINGH & ORS vs. USHA RANI & ORS*** on 24.08.2016 held that there is no period prescribed in the Limitation Act for moving an application under Order 9 Rule 7 CPC. This court held as follows:-

“3.Though the respondents are not served, in my opinion, there is no need to serve the respondents as the impugn order proceeds on a wrong provision of law. There is no limitation period provided under the Limitation Act for moving an application under Order 9 Rule 7 CPC.

4.Reference may be had to the judgement of this court ***M/s S R Foils and Tissues Ltd vs M/s Print and Digital India Pvt Ltd*** in C.R.P. 118/2016 dated 09.08.2016. Reference may also be had to the judgment of this court in ***DDA v. Shanti Devi & Anr., AIR 1982 (Del) 159.***

5.Reliance may also be placed on a judgement of the Madras High Court in the case of ***Visalakshi vs Umapathy and Ors 2015 (5) CT C6.*** Relevant paragraphs read as follows:

“27. The ratio applied by the learned Single Judge of this Court in Rajaji's case, has also been applied in C.L Cleetus vs. South Indian Bank Ltd. and another (MANU/KE/0485/2007 : AIR 2007 Kerala 301), wherein the Kerala High Court has observed that,

"It is true that there is distinction between applications which are filed under Order 9 Rule 13 and those filed under Order 9 Rule 7, in that while the former seeks

cancellation of decree finally disposing of suits, the latter seeks cancellation of only orders setting the applicant ex parte, thus preventing him from participating in further proceedings in the suit. It is also true that unlike the applications under Order 9 Rule 13 there is no article in the Limitation Act providing any specific period of limitation for applications under Order 9 Rule 7. Such applications will be governed by Article 137, the residuary article which prescribes a period of three years."

28. The decision in Pilla Reddy and others vs. Thimmaraya Reddy and others (MANU/TN/0968/1996: (1997) 1 MLJ 37) stands on a different footing and therefore, it need not be discussed in this case.

29. In an unreported judgment decided on 15.2.2013 by the Delhi High Court in Vikas Dedeech vs. Richlook Garments (P) Ltd., the decisions in Palani Nathan vs. Devanai Ammal (MANU/TN/0330/1987 : 1989 (2) L.W.63), Kasturi and others vs. Saravanan @ Sakthi Saravanan (MANU/TN/1595/2010 : (2010) 7 MLJ 802), Rajaji vs. R. Krishnaji (MANU/TN/0745/2005 : 2006-1-L.W.790) and C.L Cleetus vs. South Indian Bank Ltd. and another (MANU/KE/0485/2007 : AIR 2007 Kerala 301) have been referred to.

30. After having gone through the catena of decisions, the learned Single Judge of the Delhi High Court has held that the contention of the learned counsel for the petitioner that the applications under Order IX Rule 7 C.P.C., are governed by Article 137 of the Limitation Act, requires no discussion in view of the legal position as laid down in the above referred decisions."

5. In the light of the above judgment of this court, the impugned order is set aside. The matter is remanded back to the trial court for afresh consideration of the application of the petitioner for setting aside the ex

parte proceedings as per law.

6. The petition stands disposed of.

JAYANT NATH, J

OCTOBER 06, 2016

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