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

+ C.R.P. 208/2016 & CM No.46774/2016

RAVINDER KUMAR OSWAL Petitioner

Through Mr.S.C.Arora, Advocate

versus

CHANDER ARORA & ANR Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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19.12.2016

1. By the present petition under section 115 of the CPC the petitioner seeks to impugn the order dated 3.10.2016 by which an application filed by the petitioner under Order 9 Rule 7 CPC was dismissed.
2. The petitioner was proceeded ex parte on 19.7.2010. The present application is now filed in September, 2016 i.e. six years after being proceeded ex parte.
3. Learned counsel appearing for the petitioner relies upon judgment of the Supreme Court in *Sangram Singh vs. Election Tribunal, Kotah, Bhurey Lal Baya, 1955 AIR 425*, judgment of this court in *Faeel Ahmed and Others vs. Islam Ahmed* in CM(M) 1274/2009 dated 7.4.2011 and judgment of the Allahabad High Court in *Aneja Hire Purchase Private Limited vs. The Additional District Judge* in W.P.No.35227/2007 dated 30.7.2010 to contend that there is no limitation to moving an application under Order 9 Rule 7 CPC and that the petitioner could have moved the trial court at any stage. Learned counsel further submits that the impugned order is entirely erroneous and the only ground for dismissing the application was

that it has been filed with delay.

4. A perusal of the application under Order 9 Rule 7 CPC will show that it is the case of the petitioner that after having been proceeded ex parte on 19.7.2010 the petitioner has been appearing in the suit. Counsel for the petitioner inspected the court file and came to know about the ex parte proceedings. Counsel then checked his diary for 2010 and came to know that the case was not listed in the diary on the said date as a result of which none appeared for the petitioner. Hence, it is urged that the absence of the petitioner and his counsel on 19.7.2010 was neither intentional nor deliberate.

5. By the impugned order the trial court has noted that the matter is now at the stage of final arguments. Application has been filed after six years after the petitioner was proceeded ex parte and no reason is stated by the counsel for the petitioner as to why he has not checked his diary all these years. From 2014, counsel for the petitioner has been appearing on almost all dates. He has also been present during the time of examination of all the witnesses. There is no explanation given as to why the application could not be moved earlier. Hence, the application was dismissed.

6. It is apparent that after being proceeded ex parte on 19.7.2010 the petitioner has not taken any steps in the matter and cannot plead ignorance of having been proceeded ex parte. Written statement has not been filed. Witnesses of the plaintiff have been cross-examined. It is not conceivable as to how the petitioner could cross-examine the witnesses of the plaintiff when he knew that he had not even filed the written statement and claim ignorance of his having been proceeded ex parte. It is clear that there has been gross negligence in follow up of the matter.

7. Now six years later, at the stage of final arguments to claim that there was an omission in the diary of the counsel would not be a ground to set aside the ex parte proceedings.

8. That there is no limitation prescribed in the Limitation Act for moving an application under Order 9 Rule 7 CPC is not disputed. However, it is settled legal position as held by the Supreme Court in ***Harihar Nath and Others vs. State Bank of India and Others, (2006) 4 SCC 457*** that Article 137 of the Limitation Act is a residuary provision applicable to all applications and objections filed in a court for which no specific limitation period is provided. In the said provision, a limitation of three years has been provided from the time when right to apply accrues. Hence, the sweeping assertion made by learned counsel for the petitioner that there is no limitation for moving an application under Order 9 Rule 7 CPC is not founded on the correct proposition of law. The judgment relied upon do not help the case of the petitioner. There is no merit in the petition. Same is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

DECEMBER 19, 2016

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