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

+ CM(M) 73/2017

BIRENDER SINGH Petitioner
Through Mr.Nittin Bhatia and Mr.Debashish
Mukherjee, Advocates
versus
VIJENDER SINGH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **19.01.2017**
CM No.2374-2375 /2017 (*exemption*)

Allowed subject to all just exceptions.

CM(M)73 /2017 & CM No.2373/2017(*stay*)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 14.1.2016 by which the application filed by the petitioner/defendant under Order IX Rule 7 CPC for setting aside the ex parte order dated 27.8.2015 was dismissed and also seeks to impugn the order dated 17.12.2016 by which a review application under Order 47 Rule 1 CPC was dismissed.

2. A perusal of the impugned order dated 14.1.2016 shows that the trial court has gone into the past conduct of the petitioner. It has noted that the petitioner was proceeded ex parte on 13.1.2015. Thereafter another application of the petitioner under Order 9 Rule 7CPC was allowed subject to costs on 14.5.2015. Also thereafter none appeared on behalf of the petitioner on 27.7.2015 and 27.8.2015. Again, none appeared on 10.9.2015.

Hence, it concluded that ample opportunities have been granted to the petitioner. It also noted that for the absence on 10.9.2015 no explanation has been provided. It also noted that the application is silent about the inaction of the petitioner on three dates after the earlier ex parte order was set aside on 14.5.2015. The application was hence dismissed.

3. A perusal of the application for review shows that the case of the petitioner was that on 27.7.2015 there was an Advocates' strike. On 27.8.2015 he could not appear as he was held up before the High Court and requested his colleague Shri Rohit Malik, Advocate, to appear who also could not appear. An affidavit to that effect has also been placed on record of Shri Rohit Malik, Advocate. It is also stated that the said advocate only relied upon the clerk who informed him of the next date 10.9.2015 but did not inform him about the fact that the petitioner was proceeded ex parte.

4. It is clear from the averments in the application that the petitioner has assigned good cause for his previous non appearance. He has pointed out that on the date when he was proceeded ex parte, namely, on 27.8.2015 he had requested his colleague to appear as he was held up before the High Court. The colleague also did not appear and hence the resultant ex parte proceedings.

5. That apart, Order 9 Rule 7 CPC reads as follows:-

“7.Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non appearance.- Where the court has adjourned the hearing of the Suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

6. It is manifest from a reading of the above provision that the party who files an application under Order 9 Rule 7 CPC has to assign a good cause for his non-appearance on the day when he was proceeded ex parte. Further, in the present case by the impugned order the trial court has stressed more on the conduct of the petitioner on dates other than 27.8.2015 when he was proceeded ex parte.
7. The impugned order suffers from manifest errors and is set aside subject to payment of costs of Rs.2,000/-.
8. I may note that an advance copy of the petition has been sent by courier to the respondents but none is present on their behalf.
9. Petition and all pending applications stand disposed of accordingly.
10. A copy of this order be given dasti under signatures of the Court Master to learned counsel for the petitioner.

JAYANT NATH, J

JANUARY 19, 2017

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