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

+ **CM(M) 275/2017**

GURVINDER SINGH SACHDEVA Petitioner
Through **Mr.Bidit Kumar Deka, Advocate**

versus

STATE BANK OF INDIA AND ANR Respondent
Through **Mr.Krishan Kumar, Adv. for R-2**

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **08.03.2017**

CM No.9404-9405/2017

Exemption allowed, subject to all just exceptions.

CM(M) 275/2017 & CM Nos.9403/2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 1.2.2017 by which two applications filed by the petitioner for the same relief, namely, setting aside of the ex parte proceedings dated 26.7.2012 were dismissed.
2. The respondent No.1 has filed the present suit for recovery of Rs.2,26,902/-. The petitioner was not served by Ordinary Process but service was effected through publication.
3. In September 2015 the petitioner filed an application under section 151 CPC stating that he had not received summons from the court as the rented accommodation which is stated in the Memo of Parties has been shut and given back to the landlord. It is further stated that in October 2014 he

came to know through respondent No.2 that the next date in the case is 21.10.2014. He engaged an advocate and when the advocate appeared in court on 21.10.2014 he came to know that the petitioner has been proceeded ex parte. It is stated that on account of starving conditions the petitioner was not able to engage an advocate to file an application for setting aside the ex parte order. Subsequently, it is claimed that he sold a gold bangle of his wife and moved the present application which is moved almost one year after having knowledge that the petitioner has been proceeded ex parte. The said application was dismissed on 31.3.2016 on the grounds of limitation. The petitioners thereafter moved a fresh application under Order 9 Rule 7 CPC for setting aside the ex parte proceedings. This application was also dismissed by the trial court on 30.7.2016 based on the earlier order dated 31.03.2016. Thereafter the petitioner filed a CM(M)917/2016 before this court challenging the order dated 31.3.2016. Before this court today it is submitted that the said petition had challenged both the orders, namely, 31.3.2016 and 30.7.2016 by which two different applications filed by the petitioners had been dismissed. However, the order of this court dated 06.10.2016 does not mention about the second order. In any case this court by order dated 6.10.2016 in CM(M)917/2016 quashed the order dated 31.3.2016 pointing out that there is no period of limitation prescribed as has been stated by the trial court in its order dated 31.3.2016 for moving an application under Order 9 Rule 7 CPC.

4. The matter was remanded back for fresh consideration. Now, the trial court has by the impugned order dated 1.2.2017 again dismissed the two applications on the ground of delay in approaching the court and on account of the fact that no sufficient reasons have been given for the delay and there

is no explanation for the delay and also for the fact that in the two applications different stands have been taken.

5. The averments as stated in the first application under section 151 CPC have already been stated above. This application was filed in September 2015. After it was dismissed on 31.3.2016 the petitioner has filed a second application under Order 9 Rule 7 CPC on 6.5.2016. In this application he states that after coming to know about the ex parte proceedings the applicant/petitioner has handed over the brief of the case (to whom is not stated). Thus the counsel was appointed by the DLSA Rohini Courts and the said counsel assured the petitioner that he would take appropriate steps for getting the ex parte order vacated. Hence, the petitioner remained under the bona fide belief that the counsel had taken appropriate steps. The said counsel had also told the petitioner that he would be duly informed through registered post in case his presence is required. Subsequently, he tried to contact the counsel but no information was available and hence it is stated that the petitioner has filed a complaint against the said counsel and has requested the new counsel Shri Rajiv Kumar Gupta to take appropriate steps to prosecute the case. It may be noted that the said Shri Rajeev Kumar Gupta is the counsel who had earlier filed the application under section 151 CPC in September 2015. An averment is also made that the said counsel had filed an application under section 151 CPC casually without making averments of brief facts (as the earlier application was also filed through Shri Rajeev Kumar Gupta, Advocate presumably the allegation is against the same counsel who the petitioner has now engaged again).

6. It is manifest from the two applications that they have been drafted in a very casual and confused manner giving completely different facts in both

of them. Both applications seek to set aside the ex-parte order dated 26.07.2012 but give completely different stands to set aside the ex-parte order. It is clear that the petitioner has failed to show sufficient cause for non-appearance on the date when he was proceeded ex parte. He has also not been diligent in following up the matter and has been casually blaming his counsel for his problems. Even before this court, learned counsel appearing for the petitioner has reiterated that it was the fault of the counsel on account of the casual manner the applications have been drafted and because of this fact that there was delay in approaching the court for setting aside the ex parte order. There is an explained delay in approaching the trial court with his application even after receiving knowledge of the ex-parte order. It is manifest that there are no reasons to interfere in the impugned order.

7. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

MARCH 08, 2017

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