

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CR No.8039 of 2017
Date of decision: 05.02.2018

M/s Lamba Enterprises

..... Petitioner

Versus

Bharat Sanchar Nigam Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Anil Rathee, Advocate
for the respondent-BSNL.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in the revision petition against the order dismissing the application under Order 9 Rule 13 CPC for setting aside the ex parte proceedings passed by the trial Court and affirmed in appeal.

The case of the defendant-petitioner is that he was served and appointed a counsel who was attending various hearings on his behalf. However, he submits that due to administrative reasons, the suit was transferred to some other Court. He submits that no notice was given to the defendant-petitioner or his counsel about the transfer of the suit to a different Court. Hence, he was wrongly proceeded ex parte on 09.01.2009. He has drawn the attention of the Court to the zimni orders passed by the transferee Court which are extracted as under:-

“01.12.2008

Present: Counsel for the plaintiff.
None for the defendant.

Case received by transfer. It be registered. Replication not filed. Now to come up on 07.01.2009 for entire evidence of the plaintiff at own responsibility.

“03.01.2009

Present: None

File taken up today as I will be on leave on 07.01.2009. No PW is present. Now to come up on for Pws on 09.01.2009 as per previous order. Parties be informed accordingly.

“09.01.2009

*Present: Counsel for the plaintiff.
None for the defendant.*

Counsel for the plaintiff has closed the plaintiffs evidence.

No body has appeared on behalf of the defendant despite the case repeatedly called since morning hence, defendant is proceeded against ex parte.

Now, for ex parte consideration to come up on 16.01.2009.”

He has also referred to Rule 6 of Chapter 13, Volume I of High Court Rules and Orders which are extracted as under:-

“When a case is transferred by administrative order from one court to another court, the Presiding Officer of the Court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on whcih they should appear before the Court to whcih the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the Court concerned and parties informed of the date fixed with the least possible delay. When a case is transfered by judicial order, the Court passing the order should fix a date on whcih the parties should attend the Court to which the case is transfered.”

He submits that the Courts below have totally overlooked this provision while dismissing the application. On the other hand, learned

counsel for the respondent has vehemently argued that normally the counsels are in knowledge of the fact that the case has been transferred and a list is displayed outside the Court.

This Court has considered the submission and has also seen the record. The record does not show that any list has been placed on the file intimating the counsels that the case has been transferred to a different Court. The decree in the present case was passed on 16.01.2009 whereas the application for setting aside the ex parte was filed on the very next day. The Courts have unnecessarily taken almost 8 years to decide the application.

In view of Rule 6 which has been extracted above, this Court find that the impugned orders passed by the Courts dismissing the application under Order 9 Rule 13 cannot be sustained.

However, this Court is also conscious of the fact that recovery of public money has been sought by the plaintiff-BSNL.

In view thereof, the ex parte decree dated 16.01.2009 is set aside. However, learned trial Court is requested to decide the suit within a period of three months from the date of receipt of certified copy of the order.

Parties through their counsel are directed to appear before the trial Court on 27.02.2018 at 10.00 AM.

Revision petition is allowed.

05.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No