

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

FAO 113/2018, CM APPL. 12183/2018 (Stay), CM APPL.
12184/2018 (Exemption)

RAJAT KUMAR YADAV

..... Appellant

Through: Mr. Pankaj Kumar Sharma, Advocate.

versus

RAMESH CHANDER GUPTA

..... Respondent

Through: Mr. Sachin Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

02.04.2018

This appeal impugns an order dated 25.09.2017, passed by learned ADJ-02 (South-East), Saket Courts, New Delhi in Misc. DJ 1476 of 2016 which sought to set aside the ex-parte judgment and decree dated 06.08.2013 in Civil Suit No. 245 of 2012. The suit having been decreed against the appellant, an application under section 151 and Order 9 Rule XIII of CPC for setting aside the judgment and decree was filed by the appellant on the basis that he came to know about the judgment and decree in January, 2015, however, as to how the petitioner came to know about such order, was not specified in the application.

The impugned order reasoned that a pedantic approach is not to be adopted and just and sufficient cause has to be spelt out in the application for condonation of such delay. It relied upon the dicta of

the Supreme Court in i) ***S. P. Chengalvarya Naidu (dead) by LRs. Vs Jagannath (Dead) by L.Rs. And others*** Civil Appeal No. 994/1972 decided on 27.10.1993 and ii) ***Uttarakhand Transport Corporation Vs Ram Sakal Mahto & Anr.*** MANU/DE/2513/2012. It further kept in view that the rights of the successful party should be kept in mind which was the beneficiary of a decree pursuant to judicial proceedings; the same should not be jeopardised or set aside on frivolous applications without any substance; it would otherwise tantamount to rewarding a premium on negligence. The Court reasoned as under:

“Applicant has to show sufficient cause in case he has to get extended period of limitation for filing application under order 9 rule 13 CPC for getting set aside Ex-parte decree beyond period of 30 days from date of his knowledge of Ex-parte judgment and decree dated 06.08.2013. Applicant in present application has not stated exact date of his coming into knowledge of Ex-parte decree dated 06.08.2013 but merely a blunt and general statement has been given that he came to know about status of his cases in January, 2015. Applicant has further not stated as to when did he file application under order 9 rule 13 CPC earlier and what happened on dates given in the said application. Applicant has not stated in the application as to who received earlier application of applicant under order 9 rule 13 CPC and what was the diary number given on the application.

Applicant has not stated that the said application is missing on account of negligence

of Court staff. To my mind applicant could not have said so as no earlier application in fact was filed by applicant under order 9 rule 13 CPC otherwise date must have been given on the said application and notice of the application must have been issued to non-applicant and there must have been record of dates given on the application in which appearance and proceedings on the application must have been recorded but there is no court record of earlier application available on record before 27.07.2016 i.e. the date on which present application was filed by applicant alongwith application under order 9 rule 13 CPC which clearly shows that present application was filed about one and half years after applicant coming into knowledge of Ex-parte decree against him. No sufficient and specific reason has been assigned by applicant for filing present application so late i.e. about one and half years after coming into knowledge of Ex-parte decree dated 06.08.2013.”

It is the appellant's case that he never knew anything about the suit proceedings or ex-parte decree till he came to know about the same in the execution proceedings in December, 2014. Accordingly, he had filed an application under Order 9 Rule XIII CPC in January, 2015. However, no number was given in the application and the Court staff simply kept the application on the file.

Assuming for a moment that the statement is to be accepted as true, then logically it was for the appellant to have pursued the matter diligently for quick relief against the *ex-parte* decree. On the contrary, he moved another application in July, 2016 i.e. 17 months'

later without any justification, since an application of the same nature was already allegedly pending. There is no whisper about the pending application in the application under Order 9 Rule XIII CPC or in the application under section 5 of the Limitation Act. In the absence of anything specific in this regard, the impugned order could not have come to another conclusion than what it did.

The learned counsel for the respondent, who appears on service of advance copy submits that even otherwise, the application under Order 9 Rule XIII CPC does not contain even a whisper about the service not having affected upon the appellant twice over. He refers to the Process Server's reports dated 24.03.2012 and 22.12.2012/02.01.2013. Therefore, on all counts, the appellant's application lacks substance.

The Court finds no reason to interfere with the impugned order. The appeal is without any merit, accordingly it is dismissed.

NAJMI WAZIRI, J

APRIL 02, 2018/acm