

\$~64

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

+ **CM(M) 206/2017 & CM APPL. No. 6778/2017**

BHOJ RAJ

..... Petitioner

Through: Mr. Lakshay Dhamija, Advocate

versus

RAJ KISHORE & ORS

..... Respondents

Through: Mr. Pawan Madan, Advocate for R-1

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

%

10.09.2018

The main contesting party to the present *lis* is respondent no. 1 with respondent no.2 to 7 arrayed on record as proforma respondents stated to be the defendants i.e. proforma respondents to the present *lis* inasmuch as they are all stated to be brothers of the present petitioner and arrayed as the defendants to the Civil Suit No. 7317/2016 pending before the District Judge (South), Saket Court as filed by the plaintiff i.e.e the respondent no.1 herein.

It has been submitted on behalf of the petitioner that the petitioner's right to file the written statement has been closed inasmuch as it was observed by the learned trial Court to the effect vide the impugned order that the petitioner having been served prior to 17th February, 2012 and having failed to file his written statement within the maximum period of 90 days which, it is

CM(M) 206/2017

page 1 of 9

submitted expired on 18th February, 2013, the petitioner has not been able to put forth his contentions to contest the said suit.

The petitioner further submits that the reason as to why the petitioner could not file his written statement is because his learned counsel chose not to assist him professionally and appropriately inasmuch as despite the petitioner having engaged the counsel, the counsel represented both the petitioner herein arrayed as defendant no.2 to the said suit and also represented the defendants no.3 to the said suit, though, he did put in appearance on behalf of the present petitioner on 26th March, 2013, and on 26th April, 2013, and also raised the contention in relation to the pecuniary jurisdiction of the Court and moved an application in relation thereto on behalf of defendant no.3, which applications were also pending, the said counsel thereafter put in appearance only on behalf of defendant no.3 though, subsequently again chose to put in appearance on behalf of the present petitioner as late as on 15th May, 2015 and also through the proxy counsel on his behalf even on 30th July, 2015.

The petitioner submits that the petitioner was under the mistaken belief that his counsel would represent him professionally and that the counsel had sought redressal in relation to the aspect of pecuniary jurisdiction qua which the application has also been filed and that the petitioner was not well-conversant with the legal provisions and could not file thus his written statement within the stipulated period of time and that the petitioner has also moved a

complaint to the Bar Council of Delhi with the specific averments in paragraph 5 of the said application which reads to the effect:-

“That thereafter the Complainant engaged Sh. Bharat Ahuja, Advocate and gave a signed vakalatnama for appearing on his behalf in the above referred suit. It is humbly submitted that the Respondent appeared for the first time on behalf of the Complainant before the Ld. ADJ, Saket Court, New Delhi on 26.03.2013.”

And also the averment at paragraph 7, which reads as under :-

“That the Complainant is the victim of improper legal advice and professional misconduct on behalf of the respondent who have not been updating and informing the Complainant with respect to the status of the captioned case instead has mislead the Complainant and had filed the solitary application under Order 7 Rule 11, Order 9 Rule 7 and Order 8 Rule 1 read with Section 151 CPC for setting aside the ex-parte order dated 10.05.2013 only on behalf of Sh. Narender (Defendant no.3) on 02.07.2013 without informing the Complainant and got the notice issued to counsel for the Plaintiff for date i.e. 24.07.2013.”

which read to the effect that the petitioner herein had engaged the counsel and had even given a signed *vakalatnama*, but despite the same, the *vakalatnama* was not even filed on behalf of the present petitioner as a consequence of which, the petitioner has been put to grave prejudice.

On behalf of the respondent no.1, to the present petition, that is the plaintiff of the suit before the learned Trial Court it is contended to the effect that the petitioner himself had been putting in appearance

before the learned Trial Court and thus, the petitioner cannot now seek to put forth the contention as sought to be raised placing all blames on his counsel and as the petitioner had been served on 17th December, 2012 and had not chosen to file the written statement within the stipulated period of the extended time of 90 days from the date of service, no further opportunity can now be granted to the petitioner to file such written statement nor can the proceedings be now relegated back.

Undoubtedly, the petitioner in the instant case as per the proceedings before the learned trial court in terms of the certified copies of the proceedings sheet dated 17th December, 2012 placed on record is indicated to have been served prior to the date of 17th February, 2012 and ought to have filed the written statement at least within the period of 90 days from 17th December, 2012, which was not so filed.

The record also indicates that the petitioner did put in appearance himself on the date of 10th January, 2013, and also on the date 7th February, 2013 on which date, an opportunity was granted to the applicant/petitioner herein to file the written statement with the matter having been renotified for the date 26th March, 2013 and even on the said date, the written statement was not filed. It cannot however be overlooked that on 26th March, 2013, the counsel against whom the petitioner herein is indicated to have made a complaint to the Bar Council of Delhi is indicated to have put in appearance on behalf of defendant no.2 i.e. the present petitioner and also on behalf

of defendant no.3 and raised the contention in relation to the jurisdiction as a consequence of which, the learned counsel for the petitioner sought time to file the said aspect and the matter has been renotified on 26th April, 2013, on which date, the stated counsel for the petitioner herein as also the counsel for defendant no.3 put in appearance before the trial court and the matter was renotified for consideration of the aspect of the pecuniary jurisdiction of the Court to the date 10th May, 2013.

The proceedings of 10th May, 2013 indicate that none chose to appear for the present petitioner nor for the defendant no.3 and the written statement having not been filed by the defendant nos. 2 and 3, the right to file the written statement was closed and the present petitioner i.e. the defendant no.2 to the suit and the defendant no.2, were proceeded *ex parte*.

On 27th April, 2013, the stated counsel for the petitioner has put in appearance on behalf of defendant no.3 and moved an application seeking the setting aside of the *ex parte* proceedings against defendant no.3 from an application under Order 7 Rule 11 of the Code of Civil Procedure as well with the matter having been renotified and vide proceedings on 24th July, 2013 an application moved on behalf of defendant no.3 for setting aside the order under Order 7 Rule 11 of the Code of Civil Procedure, Order 9 Rule 7 and Order 8 Rule 1 read with Section 151 of the Code of Civil Procedure and the said applications were listed for 21st September, 2013 and an opportunity

was sought on behalf of the respondent to file response thereto to the said application which was renotified for 9th February, 2013 and on 9th February, 2013, there was representation on behalf of defendant no.3 but there was no representation on behalf of the present petitioner i.e. defendant no.2 with the matter having been renotified on 25th February, 2014 in relation to which, a further submission is made on behalf of the present petitioner that the counsel for defendant no.3 sought time to move separate applications under Order 7 Rule 1, Order 9 Rule 7 and Order 8 Rule 1 of the Code of Civil Procedure to contend to the effect that this submission made by the counsel for the defendant no. 3 which in fact was the submission in relation to moving a further application on behalf of defendant no.2 i.e. the present petitioner, in relation to which, it is submitted on behalf of the plaintiff i.e. for the respondent no.1 herein, that the observations and proceedings dated 9th December, 2013 in relation to the submission of moving of the separate applications under Order 7 Rule 11 Order 9 Rule 7 and Order 8 Rule 1 of the Code of Civil Procedure, in fact related to the submission made on behalf of the petitioner as the proceedings dated 9th December, 2013 qua the submissions made on behalf of defendant no.3 to move a separate application under Order 7 Rule 11 Order 9 Rule 7 and Order 8 Rule 1 of the Code of Civil Procedure, in fact, related to moving separate applications under the separate provisions i.e. under order 9 Rule 7 and separately under Order 7 Rule 11 CPC and separately under

Order 8 Rule 1 CPC and did not relate to the submissions that are sought to be made on behalf of the present petitioner that the said application was sought to be moved on behalf of the defendant no.2 i.e. the present petitioner.

The order dated 9th December, 2013 is to the following effect :

“Reply filed by plaintiff to the application u/o. 7 Rule 11, u/o. 9 Rule 7 and Order 8 Rule 1 CPC of defendant no.3. Copy supplied.

Ld. Counsel for defendant no.3 seeks time to move separate applications u/o. 7 Rule 11, u/o. 9 Rule 7 and Order 8 Rule 1 CPC.

List for arguments on the application on 25.02.2014.

Interim order to continue, till next date of hearing.”

and apparently this contentions on behalf of the respondent is correct as the said application is filed along with the Annexure P-16 which is also filed with an composite application; paragraph 5 of which reads as under :-

“That this fact was brought to the knowledge of court by counsel for defendant no.3 and as such plaintiff was called upon to make clarification in this regard. Further, in view of aforesaid situation, defendant no.3 was consequently not called upon to file his written statement.”

The said application has been filed by defendant no.3, who is stated to have been represented by the same counsel as was

representing the defendant no. 2. The same very counsel for defendant no.3 is indicated to have put in appearance in person on 15th May, 2015 for the present petitioner i.e. the defendant no. 2.

Without any observations on the merits or demerits of the complaint made by the petitioner to the Bar Council of Delhi, against the learned counsel who represented the defendant no. 2 i.e. the petitioner herein on 15th May, 2015, taking into account the appearance of the counsel on 15th May, 2015 in these proceedings as very same counsel represented for defendant nos. 2 and 3 as well at stages with the submission in relation to the pecuniary jurisdiction and sought rejection of the plaint having been repeatedly made, the contention raised on behalf of the petitioner to the effect that he was not assisted professionally and appropriately cannot be disbelieved.

In the circumstances, it is appropriate, in the interest of justice to grant the prayer made by the petitioner seeking the permission to file the written statement in relation to which however the plaintiff of the said suit has undoubtedly to be adequately compensated due to the lapse of time and taking into account the factum that the petitioner herein despite appearance after receipt of the summons for settlement of issued had not filed written statement within the stipulated time after receipt of the process.

In these circumstances, the defendant no. 2 i.e. the present petitioner is permitted to file the written statement in the proceedings and is permitted to file the written statement within a period of ten

days from today, subject to payment of cost of Rs. 40,000/- to the plaintiff.

The said written statement be filed by the petitioner herein before the learned trial Court latest by 20th September, 2018 on the record with the proof of payment of costs to the respondent no.1 herein i.e. the plaintiff of the said suit.

In the event of the written statement and the payment of costs not being made by the date 20th September, 2018, the learned trial Court would proceed to hear the final arguments. The learned trial Court is thus directed to take up the matter on the date 24th September, 2018, instead of the date of hearing i.e. 11th September, 2018 after giving notice of the date of the proceedings also to the other parties represented before the learned Trial Court.

The petition is disposed of.

A copy of this order be sent to the learned trial Court.

ANU MALHOTRA, J.

SEPTEMBER 10, 2018

P

CM(M) 206/2017

page 9 of 9