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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 31st January, 2018

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FAO 433/2016 & CM No. 19444/2017 (stay)

ANKUR MITTAL

.... Appellant

Through: Mr. Sanjeet Kumar, Advocate.

versus

ANJU CHITKARA & ORS

..... Respondents

Through: Mr. Ashish Pratap Singh with
Ms. Aanchal Rana, Advocates
for R-1 to 4.
Ms. Neeta Goyal with
Mr. Gaurav Gupta, Advocates
for R-5 along with R-5 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The background facts leading to this appeal were noticed at length in the proceedings recorded on 05.07.2017 which read as under:-

“By the first appeal against order challenge is brought to the dismissal of the application under Order IX Rule 13 CPC by the Motor Accident Claims Tribunal by order dated 09.05.2016. The appellant had been impleaded as respondent no.2 in the accident claim case (MAC 154/2012) decided on 30.01.2014.

The compensation in the sum of Rs.26,21,600/- was awarded with interest at the rate of 9% p.a. in favour of the claimants (respondent no.1 to 4 herein) on account of death of Anil Kumar Chitkara in the motor vehicular accident which statedly took place due to rash driving of motor cycle bearing no.DL-3SBF-6309 by the appellant herein. It appears the said offending vehicle was not insured against third party risk for the relevant period and, therefore, liability was fastened against the appellant and one Rajiv Kumar Jain (fifth respondent) jointly and severally, the insurance company having been absolved.

In the cause title, the Registry has added the name of the Oriental Insurance Company Ltd. amongst the respondents. This appears to be on incorrect assumption that insurance company is a party to these proceedings. Even the memo of parties filed with the appeal at hand does not include the said insurance company in the array of respondents. Therefore, the learned counsel appearing for the insurance company is relieved of his responsibility in the case.

The Registry shall take suitable corrective steps.

After the completion of service, by order dated 08.02.2017, it was directed by the learned predecessor bench that the matter shall be put in the list of 'regulars' to be taken up in due course. The matter has come up again before the court on application (CM 19444/2017) whereby the appellant seeks stay against the execution.

In the facts and circumstances noted above, given the observations in the impugned order that the notice of the claim petition was duly sent at the correct address of the appellant but was evaded intentionally, and given the fact that the application under Order IX Rule 13 CPC was also filed leisurely, there is no good

ground why the execution should be stayed unconditionally.

In these circumstances, it would be proper if the appellant is directed to deposit 50% of the awarded amount with corresponding interest with the Tribunal, which he must do within 30 days from today. Upon such deposit being made, the amount shall be kept in an interest bearing fixed deposit in a nationalized bank initially for a period of three months with provision for auto renewal. It is made clear that the amount shall not be released till further directions from the court.

From the submissions made, it appears that the execution proceedings are pending before the Tribunal. In case the compliance is not made by the appellant, the execution proceedings against him shall continue.

The counsel representing the fifth respondent submits that the amount of Rs.4 Lakhs has already been paid. The fifth respondent shall also discharge his liability by making requisite deposit with the tribunal positively within 30 days from today. Since there is no challenge brought to the award by that party, the amount deposited by fifth respondent shall be released to the claimant in terms of the award.

In the given facts and circumstances, the issue being small, the appeal deserves to be fast-tracked. Therefore, it shall be listed for hearing and disposal on 06.09.2017.

Dasti.”

2. On 06.09.2017, the parties were heard, the submissions made at which stage are also germane to the discussion here and, thus, the proceedings of that day may also be extracted as under:-

“The directions in the order dated 05.07.2017 about deposit of 50% of the awarded amount with corresponding interest with the Tribunal have not been complied with by the appellant.

Counsel on all sides have been heard in part.

The basis contention urged by the appellant is that his address would not be complete unless the name of the colony “R.K. Puram” was added after the description of the property “C-66, Govindpuram”, it being admitted that the locality falls within the territorial jurisdiction of police station Kavi Nagar of District Ghaziabad, U.P. The mention of the colony “R.K. Puram” is missing from the description in the cause title of the claim petition.

While the appellant seeks to demonstrate that the property “C-66, Govindpuram” without mention of the colony “R.K. Puram” would be a distinct property, it is the argument of the claimants, on the other hand, that the appellant himself has been mentioning his address without reference to “R.K. Puram” being added as is sought to be shown with reference to the averments in para 12 of the application under Order IX Rule 13 CPC and the affidavit of the appellant appended thereto. It is also the submission of the claimants that the appellant had mentioned his address same as given in the claim petition while being admitted to bail in the corresponding criminal case.

The claimants are given liberty to come with additional material in the nature of the documents relating to release of the appellant on bail in the criminal case.

On cost of Rs.10,000/-, the time for compliance by the appellant with the direction to deposit 50% of the awarded amount with upto date interest is enlarged

by two weeks from today. In case of continued default, all consequences will follow.

Be listed on 21.11.2017.

The appellant must remain present in person on the next date.”

3. Pursuant to the liberty given, the claimants have submitted on record, additional documents on 15.11.2017. The said documents include a certified copy of the personal bond submitted by the appellant on 29.05.2012 before the investigating police officer wherein he did not mention the words “R.K. Puram” as part of his address. As earlier pointed out and confirmed from the record, in the affidavit filed in support of the application under Order IX Rule 13 CPC, the address given by the appellant was also similarly stated, omitting any reference to the locality “R.K. Puram”.

4. In the above facts and circumstances, the plea that the omission was a clerical error cannot be accepted.

5. The appeal is found devoid of substance and is dismissed. Pending application becomes infructuous and is dismissed accordingly.

R.K.GAUBA, J.

JANUARY 31, 2018

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