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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 27/2019 & CM APPL. 5815-5816/2019**
DOCLAND SERVICES LTD Appellant
Through Mr. Pradeep Kumar, Adv.

versus

ANIL SEKHRI Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **06.02.2019**

CM APPL. 5816/2019

Exemption allowed subject to all just exceptions.

Application is disposed of.

RSA 27/2019 & CM APPL. 5815/2019

The present is the regular second appeal filed by the appellant assailing the order dated 22.03.2018 in RCA no. 20281/16 and the order dated 12.10.2018 in CS No. 20281/16. This being the second appeal in terms of the Section 100(4) of the CPC, notice can be issued as also laid down by the Hon'ble Supreme Court in terms of the verdict in *Surat Singh (Dead) vs Siri Bhagwan & Ors CIVIL APPEAL Nos.9118-9119 OF 2010 dated 19 February, 2018* only in the event of there being a substantial question of law that emerges from the impugned orders.

Submissions have been made on behalf of the appellant.

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Learned counsel for the appellant has *inter alia* placed reliance on the verdict of the Hon'ble Supreme Court in ***Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Sao and others AIR 2002 SC 1201*** and on the verdict of the Hon'ble Division bench of this Court in ***Sanjay Kumar and Anr. Vs. Sita Rani Khanna and Ors. 2007, 2007 (98) DRJ 173*** to contend that a liberal interpretation to the provisions of the Section 5 of the Limitation Act, 1963 ought to be granted. Undoubtedly, there is no dispute to the said preposition, however, the applicability of Section 5 of the Limitation Act, 1963 is to be looked into in the facts and circumstances of each case.

The proposed substantial questions of law the appellant seeks to urge in the instant case are to the effect : -

“i) Whether the First Appellate Court or Ld. Trial Court was justified in passing the impugned judgment, order and decree without considering the grounds taken in the application for setting aside ex-parte as well as appeal?

ii) Whether the First Appellate Court or Ld. Trial Court was justified in passing the impugned judgment, order or decree without considering the judgments as well as the law laid down in LRs Vs. Union of India and others AIR 1985 Supreme Court (2) Rama Ravalu Garvade V. Sataba Gavudu (dead) through LRs and another (1997) 1 SCC 261, (3) N Bala Krishnan Vs. M. Krishnamurthy, (1988) 7 Supreme Court cases 123, (4) State of West Bengal Vs. The administrator

Howrah Municipality and others 1972 1 SCC 366, (5) Sital Prasad Saxena (dead) by LRs Vs. Union of India and others AIR 1985 Supreme Court 1?

iii) Whether the First Appellate Court or Ld. Trial Court was justified in passing the impugned judgment, order or decree despite the letter of appointment dated 30.10.2000 according to which the suit of the plaintiff was not maintainable and the jurisdiction of the Court was also barred as per clause 13 of the appointment letter?

iv) Whether the First Appellate Court or Ld. Trial Court was justified in passing the judgment, order or decree without considering the submission of the appellant that the appellant was prevented by the sufficient cause for not appearing before the Court and the Counsel for the appellant without any intimation did not appeared in the matter and neither informed the appellant about the fate of the case and proceedings and the appellant should have been given chance to bring the facts before the Court as per the judgment and law laid down in AIR 1987 SC 1500 as well as in AIR 1971 SC 1506?

v) Whether the First Appellate Court or Ld. Trial Court was justified and correct in passing the impugned judgment relying heavily upon the version of the respondent and further not relying upon the judgments given by the appellant in

support of his appeal as well as application that the application for condonation to be given liberal construction and the ratio given in the judgment is to be applied though in the impugned order the Ld. Appellate court agreed with the ratio given in the judgment but did not apply the same?

vi) Whether the First Appellate Court or Ld. Trial Court was justified in the impugned judgment order/decreed that the plaintiff/respondent herein has not been able to prove his case in further the witnesses produced by him were the witnesses having vested interest and they have also filed a case against the appellant and none of the documents which were exhibited were exhibited by the witness from the accounts department and as such the plaintiff further concealed the factum of appointment letter ?

vii) Whether the first appellate Court the Ld. Trial Court failed to appreciate the fact that the appellant has deposited the 50% of the amount as per the directions of the appellate court which shows that the appellant was diligent in proceeding and which shows his seriousness about the matter and the appellate court was not justified the appellant was not serious in the matter and the appeal does not have the merits?

viii) Whether the First Appellate Court or Ld. Trial Court was not justified in deciding the appeal on merits rather the appellate Court went a head on a premise that no grounds for

condoning the delay in filing the appeal despite the judgments passed by the Hon'ble Apex Court on that point?

ix) Whether the first appellate Court and Ld. Trial Court failed to appreciate the grounds taken by the appellant in the appeal ?

x) Whether the first appellate court and Ld. Trial Court has not exceeded its jurisdiction in passing the impugned judgment, order or decree beyond the factual and evidentiary records of the case?”

It is essential to observe that the order dated 22.03.2018 in RCA no. 20281/16 is an order which has dealt with an appeal that has been filed by the appellant seeking condonation of delay in filing the appeal against an ex-parte judgment and decree dated 19.03.2014 and the order dated 12.10.2018 in CS No. 20281/16 is the order vide which the application seeking review of the said order dated 22.03.2018 was declined. Apparently thus the substantial questions of law that are sought to be framed on behalf of the appellant in relation to the merits or demerits of the suit initially instituted cannot even be considered.

The impugned order dated 22.03.2018 in RCA no. 20281/16 of the Court of the learned ADJ-07, South East, Saket Courts, New Delhi, categorically indicates that the appellant herein had already been served with the summons of the settlement of issues after March, 2012 when the suit was filed and apparently even before the date of hearing i.e. 26.05.2012 as reflected in para – 13 of the said order, which indicates that the legal

representative of the appellant had appeared before the Court and moved an application under Order VII Rule 11 of the CPC which application under Order VII Rule 11 of the CPC was dismissed by the learned Trial Court on 14.08.2013 after hearing both the sides and passing a comprehensive order, whereafter the defence of the defendant was struck off vide order dated 06.09.2013 for not filing the written statement, whereafter the application seeking review of the order was also moved by the defendant i.e. the appellant herein which was dismissed on 21.01.2013, whereafter the defendant had stopped putting appearance and the final ex-parte judgment was passed on 13.03.2013 and the defendant i.e. the appellant herein took no action thereafter but sought to submit before the Court qua the application under Order IX Rule 13 of the CPC and contended before the learned First Appellate Court to the effect that the appellant herein learnt of the judgment and decree dated 19.03.2014 only when the bailiff came to execute the warrants of attachment against the appellant which bailiff as per record was indicated to have gone to the premises of the appellant on 28.02.2015, whereafter the application under Order IX Rule 13 of the CPC was moved on 21.04.2015, which was dismissed on 02.04.2016 and the appeal was thereafter filed on 29.04.2016. It is indicated vide the order dated 22.03.2018 in RCA no. 20281/16 that the appellant had stopped appearing before the learned Trial Court after the application for review, for setting aside the order of striking off the defence of the defendant i.e. the appellant was dismissed in December, 2013.

The observations thus of the learned Trial Court in para-18 of the said verdict, which read to the effect : -

“18. It was the duty of the defendant, thereafter to appear in the court or atleast remain aware of the proceedings as he was assisted by the advocate. The defendant/appellant herein continuously kept mum for about one year till the time the warrants of attachment were not issued and the Bailiff had visited the house for execution of the warrants of attachment to satisfy the execution petition. In the entire application for condonation of delay, no reason has been assigned as to why the defendant had stopped appearing in the Trial court after 11.12.2013 or what stopped him from inquiring about the case after he stopped appearing.”

cannot be faulted.

A perusal of the application under Order IX Rule 13 of the CPC that was filed by the appellant herein before the learned Trial Court in Suit bearing CS No. 13/2013 itself indicates that vide paragraph 3 thereof the submission made therein was to the effect that the counsel appearing in the matter did not appear on the date 19.02.2014 which resulted in ex-parte proceedings against the defendant on 19.02.2014 at 11.30 AM though the procedure was that the ex-parte order ought to have been passed only after 2.00 PM. There are other submissions also made in paragraph 4(j) of the said application, which also read to the effect : -

“j. That the defendant was in this case represented by the counsel but the counsel did not appear on 31.01.2014 and on 19.02.2014 which resulted in the ex-parte on 19.02.2014 and

thereafter on 19.03.2014 the Ld. Predecessor was pleased to pass ex-parte judgment and decree against the defendant company which has caused grave prejudice to the defendant company.”

The same, apparently bring forth as rightly observed by the learned First Appellate Court the complete laxity of the appellant in pursuing the proceedings before the learned Trial Court and the submissions that were made through the said application itself to the effect that the ex-parte proceedings were initiated only because the counsel for the appellant did not put in appearance on 19.02.2014, or did not put in appearance on 31.01.2014, are devoid of merits, taking into account the factum that as reflected vide the impugned order itself that an ex-parte judgment was passed on 13.03.2013 and that the appellant had not been represented on 26.05.2012 and thereafter the application under Order VII Rule 11 of the CPC as observed hereinabove was dismissed on 14.08.2013, whereafter the defence of the defendant was struck off on 06.09.2013 for not filing the written statement and thereafter the application for review of the order dated 06.09.2013 was dismissed on 21.01.2013.

It is submitted by the learned counsel for the appellant that the written statement was filed but the same was not taken on record. Be that as it may, the impugned order reflects apparently as observed hereinabove the total negligence on behalf of the appellant as rightly observed by the learned Trial Court vide para – 19, the grant of prayer made by the appellant would amount to putting a premium on the abuse of process of law. There is

nothing that arises out of the impugned order, which can bring forth any substantial question of law in the matter. In view thereof, the appeal and the accompanying application are declined.

ANU MALHOTRA, J

FEBRUARY 06, 2019/MK