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10-03-2022

Ct. 8

FMAT 573 of 2017
CAN 1 of 2017 (old CAN 6397 of 2017)
CAN 2 of 2017 (old CAN 6398 of 2017)
CAN 3 of 2019 (old CAN 6416 of 2019)

State of West Bengal & Ors.
Versus
Nanu Shome

Mr. Swapan Kumar Pal, Adv.
Mr. Suprabhat Bhattacharya, Adv.
...for the appellants.

Mr. Amales Ray, Adv.
Mr. Aman Gupta, Adv.
...for the respondent

By consent of the parties, the appeal and the connected applications are taken up together and disposed of by this common order.

This appeal is arising out of an order dated 26th February, 2016 passed in Misc. Case No. 8 of 2012 (arising out of Money Suit No. 58 of 2001) passed by the learned Civil Judge (Senior Division), Siliguri.

The plaintiff has filed a Money Suit being No. 58 of 2001 against the present appellants for recovery of a sum of Rs.9,44,982/-. The claim in the suit was arisen out of non-payment of the final bills for execution of three work orders between 1990-93. The suit was preceded by a legal notice dated 14th February, 2000 and a further notice dated 26th November, 2000 issued under Section 80 of the Code of Civil Procedure.

In spite of service of summons, the defendants did not file any written statement. The defendants admitted that they had received the summons but due to shifting of the office of the

defendant no.3 to Berhampore, District Murshidabad along with the all establishments and employees, the written statement could not be filed. The Deputy Superintendent of Engineer of the defendant no.3, in his examination in chief, has stated that on 7th January, 2008, the establishments of the defendant no.3 had been shifted.

This explanation appears to be untrue in view of the fact that the Deputy Superintendent of Engineer of the defendant no.3, in his examination in chief, has stated that on 7th January, 2008, the establishment of the defendant no.3 i.e. the Superintending Engineer, Darjeeling Circle was shifted to Berampur for seven years. The defendants neither inquired from the Court nor tried to ascertain if the suit had progressed or any decree was passed in the suit. It was only when the decree-holder put the decree to execution in the year 2009 being Money Execution Case No. 6 of 2009, the present appellants with a view to throw a spanner in the will decided to file an application under Section 5 of the Limitation Act along with a petition under Order IX Rule 13 of the Code of Civil Procedure. The appellants also appears to have filed a Misc. Case under Section 47 of the Code of Civil Procedure being Misc. Case No. 6 of 2012 for setting aside of the ex-parte decree and a petition under Section 5 of the Limitation Act was filed on 25th January, 2012 i.e. almost eight years after the decree was passed.

We feel that one should must have enough courage to make such bold statement when the fact remains that the appellants have received the summons much prior to the alleged shifting of the office of the defendant no.3 and did not feel it

necessary to file the written statement and to contest the suit. A deponent on behalf of the appellants, during cross-examination, has stated that in the year 2001 he was posted at Calcutta at PHE Department and he had no personal knowledge about the institution of the said suit. What really prompted him to go through the old files in order to find out the status of the suit in 2012 has remained un-explained. In any event, the record would show that there has been a culpable negligence on the part of the appellants to proceed with the suit.

In the applications for condonation of delay and for setting aside of the ex-parte decree, no grounds far less sufficient have been made out by the petitioners. The appellants tried to explain the delay due to shifting of its office. It was alleged that the Additional Government Pleader could not submit the written statement within time due to shifting of the office of the defendant no.3 to Behrampur. The shifting of the office took place on 7th January, 2008 and not prior thereto. The explanations offered for non-appearance of the appellants and non-filing of the written statement, made out in the application for setting aside of the ex-parte decree and the petition under Section 5 of the Limitation Act are inconsistent with the statements made in the examination in chief on behalf of Mr. Ashoke Dhar in paragraph 4 of the application under Order IX Rule 13 of the Code of Civil Procedure. The appellants made the following averments:

“That the Addl. Govt. Pleader on behalf of Petitioners/Defendants could not submit the written statement within time for shifting of the office of the Defendant No.3 to Behrampur, Dist. Murshidabad along

with all establishment and also the employees without giving new address of the said office at Behrampur.

That the officers of the Petitioners/Defendants were not aware about the ex-parte decree which was passed on 06.02.2004 against the Defendants/Petitioners. There was serious communication gap amongst the officers of the Defendants/Petitioners to prepare written statement to contest the instant suit.”

However, in the examination in chief where the averments made for non-appearance and non-filing of the written statement which are reproduced below:

“That thereafter on 07.01.2008 the establishment of Defendant no.3 the Superintending Engineer, Darjeeling Circle had been shifted to Berampur within the District of Murshidabad alongwith the employees of the said Department the Defendant No.3.

That the present Petitioner Superintending Engineer, North Bengal Circle, situated at Babu Para, Siliguri under the State of West Bengal was not aware about the above noted Money Suit as well as the ex-parte decree against the State of West Bengal.

That from the case record of the above noted suit which was kept in the custody of the Superintending Engineer of P.H.E., Darjeeling Circle. The present Petitioner came to know that the then Addl. Government Pleader could not submit the Written Statement within the time for some unavoidable circumstances as a result the above noted suit was heard ex-parte on 02.06.2004. That the officers of the Petitioners were not aware about the date and also the date of ex-parte hearing of the suit as there was a communication gap between the officers of the Petitioners/Defendant and the then Additional Government Pleader to prepare the Written Statement to

contest the instant suit.”

The defendants admitted to have received the summons but did not file the written statement. The appellants are not privileged litigants and cannot unduly delay the hearing of the suit. They cannot choose their own time as may be convenient to them and expect the Court to decide in their favour as and when they approach the Court overlooking their deliberate inaction and negligence.

The instant case is a deliberate attempt to defeat justice. Initially, the appellants did not file an application for setting aside of the ex-parte decree, instead, they filed an application under Section 47 of the Code of Civil Procedure. They accepted the decree but the question is about its executability. Thereafter, they filed an application for setting aside of the ex-parte decree and also filed an application for condonation of delay. It was because of filing of the said applications in the year 2012, the Money Execution Case instituted by the plaintiff in the year 2009 being Money Execution Case No. 6 of 2009 is remained pending. The decree-holder was deprived of the benefits of the decree for almost 18 years now.

In *Amalendu Kumar Bera vs. State of West Bengal* reported in (2013) 4 SCC 52 and *Postmaster General vs. Living Media India Limited* reported in (2012) 3 SCC 563, the Hon'ble Supreme Court has categorically stated that delay cannot be mechanically condoned merely because the Government or a wing of the Government is a litigant before the Court. It was further observed in the said decisions that the Government departments

are under a special obligation to ensure that they perform their duties with diligence and commitment and that the plea of bureaucratic delays cannot be accepted in view of the prevalent modern techniques which are used by the litigants across the globe.

The learned Trial Judge did not find any sufficient reasons to accept the explanation offered by the appellants for approaching the trial court in the year 2012 for setting aside of the ex-parte decree along with an application for condonation of delay. The Government or the wings of the Government cannot be treated differently from the ordinary litigants when it is apparent that there has been a deliberate delay and culpable negligence on the part of the Government or its wing in pursuing its action. The decree holder has been denied of the fruits of the decree for almost 18 years.

On such consideration, we do not find any reason to interfere with the order dated 26th February, 2016 passed in Misc. Case No. 8 of 2012.

The appeal being FMAT No.573 of 2017 and the connected applications being CAN 1 of 2017 (old CAN 6397 of 2017) and CAN 3 of 2019 (old CAN 6416 of 2019) are dismissed.

CAN 2 of 2017 (old CAN 6398 of 2017) is wrongly appearing in the list as it was disposed of on 29th November, 2021. The department is directed to make appropriate endorsement so that this application is not shown as pending.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite

formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)