

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 1071 / 2019

Rakesh Road Carriers Carrying on Business
As Transport Contractor and Commission Agents ... **Appellant**

Versus

Silverwing Roadways (South) ... **Respondent**

Mr. Bhupendra Parekh, Advocate for the Appellant.

Ms. Kalayani G. Parmar, Advocate for the Respondent No.1.

CORAM : SANDEEP K. SHINDE, J.

DATE : 9th MARCH, 2022.

P.C.

Heard. Learned Counsel for the parties.

1. This appeal under Order-43 Rule-1(d) read with Section 104 of the Code of Civil Procedure, challenges the order dated 30th July, 2019, by which the learned trial Court declined to set aside the ex-parte decree dated 3rd May, 2016 passed in Suit No. 9180/1992.

2. Background Facts are as under ;

M/s. Silverwing Roadways (South) (Plaintiff) instituted suit in this Court for seeking money decree in the sum of Rs. 1,77,377.60/-. The suit was decreed exparte on 5th October, 1999 (First exparte decree). Whereafter Defendant-Appellant moved Notice of Motion No. 2096/2001 under Order-9 Rule-13. This Court set aside the exparte decree upon the Defendant, depositing Rs. 1,50,320/- in the Registry of the Court. Thereafter, in view of the enhancement of the pecuniary jurisdiction, the suit was transferred to the City Civil Court in the year 2015. Just the same, the suit was decreed ex-parte on 3rd May, 2016 (second exparte decree). Decree-holder in execution of the decree attached the properties of the Appellant-Judgment Debtor. After which, in February, 2019, the Defendant moved Notice of Motion No. 1089/2019 in Execution Application No. 104/2018. Whereby Defendant/Judgment Debtor sought stay to the execution of warrant of attachment and also prayed for setting aside the 'second exparte decree'. The motion was rejected by the trial Court on 30th July, 2019. That order is challenged in this appeal.

3. The facts of the case undoubtedly signify and suggest that the Defendant was inattentive, throughout the suit proceedings. In consequences, he let the suit decreed exparte, second time. Second exparte decree was passed in May, 2016. Application to set aside it, was moved in February, 2019. Even thereafter, efforts were not made to bring the application on board from hearing. There is no explanation as to why Defendant did not appear and contest the suit. Thus, over view of the matter, leads me to hold that the Appellant has not shown sufficient cause for setting aside exparte decree and thus impugned order requires no interference. The appeal is dismissed.

4. It appears the Plaintiff - decree-holder had withdrawn the decreetal amount with interest accrued thereon, then deposited by the Defendant in pursuant to order dated 6th September, 2001 passed by this Court, while setting aside the first ex-parte decree. Grievance of Counsel for the Appellant is that, the learned trial Court while passing the judgment on 3rd May, 2016 did account for the amount deposited by Defendant. If that be the case, the Appellant-Defendant

may move an application under Section 152 of the C.P.C., to seek correction of the decree. For all that reasons, appeal deserves no consideration. It is rejected.

(SANDEEP K. SHINDE, J.)

MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM

Digitally
signed by
MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM
Date:
2022.03.15
17:37:52
+0530