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

+ CM(M) 857/2022 & CM APPL.37013/2022, CM APPL.37014/2022

PUNJAB AND SIND BANK Petitioner

Through: Mr. B.K. Mishra, Adv.

versus

NEW FOUND LAND ENTERPRESES PVT LTD & ORS.

..... Respondents

Through: Mr. Irfan Ahmed, Adv. with
Ms. Shweta Saini, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **29.08.2022**

1. This petition, under Article 227 of the Constitution of India, assails orders dated 26th May 2022 and 2nd August 2022 passed by the learned Additional District Judge (“the learned ADJ”) in CS 57506/2016 (*New Found Land Enterprises Pvt Ltd v. Imperial Cooperative Bank Ltd.*).

2. The petitioner M/s Punjab and Sind Bank was Defendant 7 in the said suit. The order dated 26th May 2022 reads thus:

“CS 57506-16

M/s New Foundland Enterprises Vs. Imperial Cooperative Bank Ltd.



26.05.2022

Present: Mr. Irfan Ahmad, Ld. Counsel for the plaintiff
alongwith AR for the plaintiff.
Defendants no. 1 to 6 are ex-parte.
None for defendant no.7.
Mr. Lalit Kumar, Ld. Counsel for defendant
no.8.

Copy of Gazette notification no. Regd No. D.L.33004/99 qua merger of Vijaya Bank with Bank of Baroda has been filed on behalf of defendant no. 8 taken on record. Copy be furnished to the plaintiff.

On 17.02.2022 a status report alongwith annexures has been filed on behalf of DCP South West. As per the same. vide order dated 01.04.1998, the investigation of FIR no 111/98 PS Vasant Kunj was transferred to District Crime Cell.

Today there is none on behalf of defendant no. 7 to pursue the matter. As defendant no. 7 has not appeared despite calls, it is proceeded ex-parte. Also, as despite repeated opportunities, pursuant to order dated 30.07.2015, defendant no. 7 has not concluded evidence causing inordinate delay in the matter, DE on behalf of defendant no. 7 stands closed.

Matter be listed for final arguments 02.08.2022.

(Vijeta Singh Rawat)
Additional District Judge-01
PHC/New Delhi/26.05.2022

At 11.30 a.m.

Mr. B.K. Mishra, Id counsel for defendant no. 7 has put his appearance. He is apprised of the proceedings as well as next date of hearing.



(Vijeta Singh Rawat)
Additional District Judge-01
PHC/New Delhi/26.05.2022”

3. The petitioner applied under Order IX Rule 2 of the Code of Civil Procedure, 1908 (CPC) for setting aside of the aforesaid order dated 26th May 2022. The said application stands rejected by the learned ADJ *vide* the subsequent order dated 2nd August 2022, which is also impugned herein.

4. A perusal of the order sheets relating to the proceedings before the learned ADJ in CS 57506/2016, which have been placed on record by learned Counsel for the petitioner, reveals that several opportunities were granted to the petitioner to complete the leading of petitioner's evidence and summoning of records initially from the Police Station Crime Branch and, later from Police Station Vasant Kunj, to where the said records had been transferred.

5. Though learned Counsel for the respondent has emphasised the number of opportunities which were granted to the petitioner, once the court had granted such opportunities, which the respondent did not chose to challenge at any point of time, earlier defaults or adjournments taken by the petitioner would, applying the principle enunciated by the Supreme Court in *State Bank of India v. Chandra Govindji*¹ be treated as condoned and lapse into insignificance.

6. Mr. B.K. Mishra, learned Counsel for the petitioner, submits that it is ironical that, having waited for so long for the records to

¹ (2000) 8 SCC 532



come from the Police Station, when, at long last, a report did come from Police Station Vasant Kunj on 17th February 2022, the learned ADJ has chosen to close the petitioner's evidence.

7. There appears to be some substance in this submission. The record sheets reveal that the matter was being repeatedly adjourned awaiting the report from the Police Station. A report has been received from the Police Station on 17th February 2022 as per the order dated 26th May 2022. Though it is true that, on 26th May 2022, there was no appearance on behalf of the petitioner, the order sheet reveals that the counsel did appear, albeit at 11:30 a.m. on the said date.

8. In that view of the matter, a clear case for setting aside the order dated 26th May 2022, insofar as it proceeds ex-parte against the petitioner is made out, as learned Counsel for the petitioner had appeared in Court, albeit late. s

9. The record from the Police Station having been received on 17th February 2022, I am of the opinion that one opportunity ought to have been granted to the petitioner to complete the recording of the evidence of the defendant's witness, especially as Mr. Mishra submits that there is only one witness whose evidence the petitioner seeks to lead.

10. The matter is next stated to be listed before the learned ADJ on 1st September 2022.

11. Mr. Irfan Ahmed, learned Counsel for Respondent 1 is



agreeable to the petitioner being given a last and final opportunity to conclude the evidence of his witness on 1st September 2022.

12. Mr. Mishra also fairly undertakes to ensure that he would conclude the recording of the evidence of his witness on 1st September 2022 and would not seek any adjournment on the said date.

13. The status report and records received from the Police Station on 17th February 2022 would also be taken on record.

14. This Court does not express any opinion regarding the significance or relevance of the said records, with respect to the controversy between the parties.

15. Mr. Mishra fairly states that he would not be making any further request to summon any other record from the police station.

16. As the matter had been adjourned for almost 10 years awaiting the receipt of record from the Police Station, and there was also a certain degree of recalcitrance exhibited by the petitioner in that regard, it is made clear that the petitioner would not be permitted to protract the proceedings any further by seeking further records from the Police Station or from any other authority.

17. The impugned orders dated 26th May 2022 and 2nd August 2022 passed by the learned ADJ in CS 57506/2016 would stand modified as above.



18. This petition is accordingly disposed of.

19. *Dasti.*

C. HARI SHANKAR, J

AUGUST 29, 2022

dsn

