

11.08.2023
Court No. 19
Item No.10
CP

C.O. 2058 of 2022

Debasish Chakraborty

Vs.

Cygnus Developers India Private Limited

Mr. Probal Kr. Mukherjee, Sr. Advocate
Ms. Shebatee Datta

...for the petitioner.

Mr. Dwaipyan Basu Mallick
Mr. Subhankar Chakraborty
Mr. Saptarshi Bhattacharjee
Ms. Ruchira Manna
Ms. Sweta Chakraborty

....for the opposite party.

The revisional application arises out of an order dated June 1, 2022, passed by the learned Civil Judge (Senior Division), 9th Court, Alipore, in Misc. Case No. 2481 of 2014. The Misc. Case arose out of Title Suit No. 1756 of 2008. The same was an application under Order 9 Rule 9 of the Code of Civil Procedure.

The learned court below allowed the application under Order 9 Rule 9 filed by the opposite party/plaintiff. The learned court observed that the Hon'ble Apex Court had laid down the principles governing restoration of suits etc. It was held that a hypertechnical approach should be avoided in order to advance the cause of justice. A party should not be deprived from arguing a case on

merits. In cases of like nature, opportunity should be given to the plaintiff to contest the suit by allowing an application for restoration, upon putting the plaintiff to terms. Accordingly, the plaintiff's application for restoration of the suit was allowed upon imposition of cost of Rs.10,000/-.

The learned court held that the evidence would show that there was no intentional negligence on the part of the plaintiff/opposite party, which had resulted in the dismissal of the suit.

Aggrieved, the defendant has approached this court by filing a revisional application on the following grounds:

- a) There was a delay of 11 days in filing the application under Order 9 Rule 9 of the Code. Such delay was not taken into account. No application for condonation of the delay had been filed.
- b) The learned court below mechanically allowed the application for restoration without weighing the evidence.
- c) The reasons supplied by the court could not be entirely based on decisions of the Hon'ble Apex Court, unless the facts of the case were similar to those decided by the Hon'ble Apex Court.

Mr. Basu Mallick, learned advocate appearing on behalf of the opposite party/plaintiff takes the court through the pleadings and submits that paragraphs 11 to 14 of the Examination-in-Chief on Affidavit, filed on behalf of the opposite party by one Ranjan Das, would indicate that the plaintiff was prevented by sufficient cause from attending the court when the suit was dismissed for default.

It has been stated that on November 25, 2013, i.e., the day when the evidence of PW-1 was fixed, an application was filed by the plaintiff seeking adjournment. The clerk of the learned advocate engaged, did not file the adjournment application within proper time. Hence, the court rejected the prayer for adjournment and asked the plaintiff to show cause. On December 6, 2013 the show cause was filed along with an adjournment application as it was difficult for the opposite party to adduce evidence on the said date. The learned court accepted such prayer and fixed the suit for peremptory hearing on December 20, 2013, as a last chance. In spite of best efforts on the part of the opposite party to be present in court, the witness was not available and hence the suit was dismissed for non-prosecution.

Reference has been made to a decision of the Hon'ble Apex Court in the matter of Raj Kishore

Pandey vs. State of Uttar Pradesh & ors, reported in (2009) 2 SCC 692. Paragraph 8 being relevant is quoted below:

“8. In our opinion, whether the applicant has made out sufficient cause or not, in the application filed, the Court is required to look at all the facts pleaded in the application. No doubt, the consideration of the existence of sufficient cause is the discretionary power with the Court, but such discretion has to be exercised on sound principles and not on mere technicalities. The approach of the Court in such matters should be to advance the cause of justice and not the cause of technicalities. A case, as far as possible, should be decided on merits and the party should not be deprived to get the case examined on the merits.”

This court finds that the opposite party is a company. The company was represented by its authorized representative. The authorized representative may not have been prompt or may not have attended the court or communicated with the learned advocate with regard to the progress of the suit. Subsequently, the authorized representative changed and Mr. Partha Sarathi Ghosh was replaced by one Mr. Ranjan Das.

Thus, there may have been some miscommunication and failure on the part of the company which was represented by its employees. However, the learned court below, in my opinion, rightly exercised discretion in order to arrive at a finding that the conduct of the plaintiff did not reflect

sheer negligence or laches on the part of the opposite party. The prayer for adjournment was made as per procedure, which the clerk may not have been able to file at the right time. The show cause was also answered, but as the witness was not available, the suit was dismissed. The grounds stated in paragraphs 11 to 14 of the examination-in-chief are satisfactory.

The cross examination which has been pointed out by Mr. Mukherjee, indicates that Ranjan Das was not apprised of the grounds for restoration or the reason for dismissal of the suit.

As has already been stated earlier that the authorized signatory of the company and/or the representative of the company who was adducing evidence on behalf of the company may not have been well aware of the situation, but for such inability the litigant which is a company, should not suffer. This court is of the view that the suit should be heard on merits. Upto the stage of filing of pleadings, steps had been taken. There was no laches or negligence. At the stage of evidence, the opposite party failed to take steps. As a result of which, they suffered dismissal of the suit.

The decision of the Hon'ble Apex Court in the matter of Parimal vs. Veena Alias Bharti, reported in (2011) 3 SCC 545, is distinguishable on facts. In the

worst case scenario, the representative of the company could be said to have acted not with the level of diligence he should have displayed, but this is not such a case where the plaintiff's suit was dismissed on the ground of lack of bona fide. Paragraph 16 of the said judgment clearly indicates that the Hon'ble Apex Court was alive to the proposition that sufficient cause would be such cause for which the party could not be blamed for the absence. Sufficient cause is a question which the court has to determine by exercising its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula. Thus, in the facts of this case, it appears that the representative of the company or the witness on behalf of the company may have failed to take prompt steps on the relevant dates, but that does not indicate lack of bona fide on the part of the company, which is the litigant.

In the Misc. Case too, the representative failed to take adequate steps at a certain point of time. The company and its stake in the suit, go beyond the conduct of its employees. The company is a juristic person.

Moreover, it is also settled law that delay can also be condoned without a formal application and, in this case, there was a delay of 11 days. Thus, the

court does not find any necessity to interfere with the order impugned as the learned court below has exercised its discretion on the basis of the settled law and also on the basis of the facts which emerged from the application and the evidence. A hypertechnical approach in this case would preclude a fair trial, which the plaintiff deserves. The court has also imposed cost of Rs.10,000/- upon the plaintiff.

However, in my opinion, the suffering caused to the defendant for having to contest a restoration application for nine years, should be further compensated. A further cost of Rs.5000/- is imposed upon the opposite party to be paid to the defendant in the suit. The total cost of Rs.15000/- will be paid within two weeks from date. The learned court below, upon being satisfied that the cost, as directed hereinabove, is paid, shall continue with the suit. The suit shall proceed in accordance with law.

Needless to mention, that the suit shall be disposed of within a year from the date of communication of this order.

The revisional application is accordingly disposed of.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)