



\$~90

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

+ **RFA(COMM) 9/2024 & CM APPLs. 1707-1711/2024**

M/S STEAMGEN AND CONTROL SYSTEM & ANR.

..... APPELLANTS

Through: Ms. Cauvery, Advocate (Through
VC)

versus

CANARA BANK THROUGH ITS BRANCH MANAGER

..... RESPONDENT

Through: None

%

Date of Decision: 10th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

1. This regular first appeal impugns the order dated 27.10.2023 passed by the District Judge, Commercial Court – 04, West District, Tis Hazari Courts, Delhi ('Trial Court') in Misc. DJ No. 445/2023, titled as '**Canara Bank v. M/s Steamgen and Control Systems and Anr.**', whereby the Commercial Court dismissed the Appellants' application filed under Order IX Rule 13 of Code of Civil Procedure, 1908 ('CPC') for setting aside of the ex-parte judgment dated 05.06.2023.

2. The Appellant Nos. 1 and 2 are defendant nos. 1 and 2 respectively and the Respondent is the plaintiff. Appellant No.1 is the sole proprietorship firm of Appellant No. 2. The suit bearing CS (COMM.) No. 631/2022 was



filed seeking recovery of Rs. 10,56,184/- along with interest on account of default in repayment of working capital loan.

3. The summons in the said suit was issued to the Appellants herein on 30.08.2022 and thereafter again on 24.11.2022. The Appellants herein, through counsel, entered appearance before the Trial Court on 16.03.2023 and a copy of the paper book was supplied to them. On the said date the Appellants were directed to file their written statement on or before 04.05.2023. However, none appeared for Appellants on 04.05.2023 nor filed the written statement; accordingly, the Trial Court closed the opportunity to file written statement and fixed the matter for plaintiff's evidence on 05.06.2023. The Trial Court thereafter on 05.06.2023 recorded evidence and after reviewing the evidence on record vide its ex-parte judgment decreed the suit in favour of the Respondent for an amount of Rs. 10,56,184/- along with interest at 9.45% per annum from the date of filing of the suit till realization with cost.

4. The Appellants subsequently filed an application dated 14.07.2023 under Order IX Rule 13 of CPC seeking setting aside of the ex-parte judgment dated 05.06.2023. The said application has been dismissed by the impugned order and is a subject matter of challenge in this appeal.

5. The learned counsel for the Appellants states that the Trial Court failed to appreciate that the Appellant No. 2 was suffering from mental depression and therefore, suffered losses in business during COVID-19 pandemic which led to the defaults in re-payment of the loan availed from the Respondent. She states that though the Appellants were duly served with the plaint and the paper-book, the non-filing of the written statement is on account of the Appellant No. 2's mental depression. She states that on merits



of the claim in the plaint, it is her submission that the Respondent failed to give benefit of the relaxations extended to MSME entities on account of COVID-19 related financial setbacks. She states that the Appellants are eligible for the said relaxations declared by the Respondent-Bank.

6. This Court has considered the submissions of the learned counsel and perused the record.

7. In the application filed under Order IX Rule 13 of CPC, it is averred that Appellant No.2, who is the proprietor of Appellant No.1, suffered huge financial losses during COVID-19 period due to which he went into depression. It is stated that the Appellant No.2's son, who is also his Special Power of Attorney ('SPA') holder, could not assist the Appellant No.2 in running the business due to lack of (business) knowledge and therefore, Appellants suffered further losses in business. It is stated that neither the Appellant No.2 nor his son was aware of the legal steps required to be taken in the suit proceedings and didn't have any funds to defend their Court case. It is stated that in these circumstances, the SPA holder (i.e., the son of the Appellant No. 2) approached his friend who is a practicing lawyer and has prepared the defense. The Appellants in these circumstances prayed before the Trial Court that the ex-parte judgment dated 05.06.2023 be set aside and they be permitted to file their written statement and contest the proceedings.

8. As per the provisions of Order IX Rule 13 CPC, the ex-parte judgment can be set aside by the Court only when the Appellants are able to satisfy the Court that the summons were not duly served, or that they were prevented by sufficient cause from appearing on the date of hearing.

9. The Trial Court in its impugned order dated 27.10.2023 has categorically held that Appellant No.2 does not dispute the fact that the



summons of suit was duly served upon him and the only ground taken is regarding the mental depression and financial hardship of Appellant No.2. The Trial Court further recorded that the application has been drafted in a cryptic manner and no supporting documents have been filed along with it. In these facts, the Trial Court dismissed the application.

10. In this appeal as well, the Appellants have not annexed any documents in support of the pleas raised in the Order IX Rule 13 CPC application. Therefore, the plea of alleged mental depression raised by the Appellants is unsubstantiated from the record and remains a bare averment. Pertinently, the present appeal and affidavit in support thereof has been filed and affirmed by Appellant No. 2. There is no material available on record to infer that the Appellant No. 2 was suffering from mental depression as alleged.

11. The Appellants do not dispute the due service of the summons and the fact that a lawyer duly entered appearance on their behalf on 16.03.2023 and sought time to file the written statement. The application filed under Order IX Rule 13 CPC does not list any cause for subsequent non-appearance on 04.05.2023 and 05.06.2023 before the Trial Court, which is a requirement for setting aside of ex-parte judgment. In these circumstances, the Trial Court rightly proceeded to adjudicate the suit in accordance with law on the aforesaid dates.

12. The Appellants despite entering appearance on 16.03.2023, elected to not appear or file a written statement when the matter was next listed on 04.05.2023 and thereafter again on 05.06.2023. The Appellants cannot circumvent the consequences of deliberately not filing the written statement (after due service of summons) and absenting from participating in the trial



by invoking the provisions of Order IX Rule 13 CPC. The Appellants have failed to satisfy this Court with any sufficient cause which prevented them from appearing before the Trial Court on 04.05.2023 or 05.06.2023. Accordingly, this Court finds no error in the impugned order dated 27.10.2023 dismissing the application filed under Order IX Rule 13 CPC.

13. In view of the dismissal of the appeal, the pending applications are also disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 10, 2024/hp/aa

Click here to check corrigendum, if any