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

% ***Date of decision : 27<sup>th</sup> August, 2024***

+ **CM(M) 3233/2024 & CM APPL. 48785-48786/2024**

**CENTRAL BANK OF INDIA**

.....Petitioner

Through: Mr. K K Mudgil, Advocate (through  
VC).

versus

**ANURADHA MANCHANDA AND ORS**

.....Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Petitioner Bank is defendant No. 1 before the learned Trial Court and is defending a suit for declaration and permanent injunction.
2. Plaintiff- Ms. Anuradha Manchanda claims herself to be a bonafide purchaser of the property in question.
3. Petitioner bank is aggrieved by order dated 10.05.2024 whereby its application moved under Order IX Rule 7 CPC has been dismissed.
4. It is noticed that the defendant Bank was proceeded against *ex-parte* way back on 01.05.2019 and despite the fact there was regular appearance from their side before learned Trial Court, for the reasons best known to the Bank, no application was ever moved seeking to set aside such *ex-parte* order.



5. The application was, eventually, moved after around five years and the same has been dismissed by the learned Trial Court.
6. According to defendant Bank, it earlier participated in the matter and even filed written statement. Its counsel was also regularly appearing before the learned Trial Court earlier but thereafter on account of transfer of the Authorized Officer of the Bank, the newly appointed officer could not follow up the matter and thereafter, nothing could be done on account of pandemic of Covid-19.
7. It is though admitted that the proxy counsel for the Bank kept on appearing before the learned Trial Court, it is supplemented that even such proxy counsel never intimated the bank that it was being proceeded against *ex-parte* and, therefore, it is contended that the non appearance and non prosecution was neither deliberate nor intentional and, therefore, it was a fit case where the *ex-parte* order should have been set aside.
8. The attention of the Court has been drawn towards various orders passed by learned Trial Court from time to time.
9. When asked, learned counsel for the petitioner-Bank also admitted that the petitioner-Bank is already having a decree in its favour against the concerned borrower and guarantor. Respondent No. 2 i.e. Mr. Om Prakash Jain is claimed to be the borrower and respondent No. 3 i.e. Mr. Pankaj Chauhan is claimed to be guarantor.
10. Be that as it may, it is quite evident that the petitioner-Bank itself is responsible for its misery. For the reasons best known to the Bank, it never



thought of defending the matter in the desired manner and has rather taken the things for granted.

11. The learned Trial Court made following observations in paras 5 to 8 of the impugned order:-

*“5. I have heard the Ld. Counsels for the Parties. I have perused the record. The Defendant No. 1 was duly served with the summons of the present suit and has filed the written statement. There was no appearance on behalf of the Defendant No.1 on 03.05.2018, 13.08.2018, 15.09.2019 and 21.01.2019. Thereafter even on 01.05.2019, none appeared on behalf of the Defendant No.1 and accordingly, the Defendant No.1 was proceeded against ex-parte. Thereafter, the matter was posted for Plaintiff’s evidence and on 12.12.2019, the PW-1 was examined and discharged and the matter was posted for remaining evidence of the Plaintiff. On 03.02.2021, the proxy Counsel for the Defendant No. 1 again appeared. The Defendant No.1 subsequently also appeared in the matter on 23.02.2021 and 16.09.2021. However, no application for setting aside the ex-parte Order dated 01.05.2019 was filed. Thereafter the Defendant No. 1 again remained absent in the matter on 19.01.2022, 25.07.2022, 18.10.2022 and 19.01.2023. On 19.01.2023, the Plaintiff’s evidence was concluded and the matter was posted for the final arguments.*

*6. The present application under Order IX Rule 7 of CPC has been filed by the Defendant No.1 on 18.03.2023. The sole reason stated in the application is that the previous panel Counsel did not inform the Defendant No.1 and the previous AR was transferred and new AR did not know about the matter. However no document has been placed on record to show as to what action has been taken against the previous Counsel or against the previous AR. No communications have been placed on record to show that the Defendant No.1 was diligently pursuing the matter or even tried to know the status of the matter.*

*7. The Defendant No.1 has filed the present application on 18.03.2023 for seeking setting aside of ex-parte Order dated 01.05.2023. The present Application has been filed approximately after 4 years of the Defendant No.1 being proceed ex-parte. It remains to be noted that though the Defendant No.1 has been proceeded against ex-parte only on 01.05.2019, however it has not been appearing in the matter since*



*03.05.2018. Even if the period of Covid period is to be excluded, the Application has been filed approximately after more than two years. There are no cogent reasons on record for the aforesaid absence, prior to Order dated 01.05.2019 or subsequent to the same. The Defendant No.1 appeared in between, in the year 2021 and took no steps for filing of any application.*

*8. The entire evidence of the Plaintiff is over and the matter is at the fag end of the proceedings. The reasons cited are not supported by any corroborations, in terms of the documents or the conduct of the Applicant. It remains to be noticed that the Defendant No.1 is a financial institution and is not any helpless illiterate litigant and therefore, due caution is warranted on its part, in pursuing the litigation. If there was negligence on the part of the Counsel/AR for a period of approximately 5 years, the same should have been explained by the communications or by an appropriate action. The officials of the Defendant No.1 have been sleeping over a period of almost 5 years and did not take any interest in the matter. No action has been taken against the responsible Officers. Merely making one line averment about the Counsel being negligent would hardly come to rescue of the Applicant, when it has been sleeping over in the matter since 03.05.2018 till 18.03.2023.”*

12. The observations are in synchronization with the court record and it is thus quite obvious that there is no impropriety and illegality in the order which may persuade this Court to invoke its supervisory powers under Article 227 of the Constitution of India.

13. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India and the duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.



14. The learned Court, after appreciating the facts in the desired manner, has come to a specific conclusion that there was no sufficient reason for setting aside the *ex-parte* order. This Court also does not find any reason to come to any other conclusion.

15. Finding no merit in the present petition, the same is hereby dismissed.

**(MANOJ JAIN)**  
**JUDGE**

**AUGUST 27, 2024/sw**