



\$~4

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

%

Decision delivered on: 23.08.2024+ **FAO (COMM) 7/2024**

M/S VISION 9 & ANR.

.....Appellants

Through: Mr Vikas Yadav and Mr Nachiket, Advs.

versus

SUN BROADCAST EQUIPMENTS PVT. LTD.Respondent

Through: Mr Kunal Kher, Adv.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. We are informed that mediation has failed. Therefore, we are proceeding to decide the appeal on merits.
2. This appeal is directed against the judgment and order dated 09.10.2023, passed by the learned District Judge, Commercial Court-04, West District, Tis Hazari Courts, Delhi.
3. The record discloses that the appellants/defendants were proceeded *ex parte* on 04.05.2022.
4. It also emerges from the record that the appellants/defendants had moved an application under Order IX Rule 7 of the Code of Civil Procedure, 1908 [hereafter referred to as "CPC"] for setting aside the directions by which they



were proceeded *ex parte*.

4.1 This application was allowed by the trial court on 06.12.2022.

4.2 While passing the said order, i.e., the order dated 06.12.2022, the court made it clear that the appellants/defendants would not have permission to file a written statement in the suit action preferred by the respondent/plaintiff.

5. The matter, thereafter, came up before the trial court on 30.01.2023.

5.1 Unfortunately, on that date, the appellants/defendants were not represented by their advocate.

6. It in this backdrop that the trial court recorded the evidence of the respondent/plaintiff and heard the final arguments in the matter on that very date itself, i.e., on 30.01.2023.

7. The appellants/defendants, thereafter, moved an application under Order IX Rule 13 of the CPC on 01.03.2023, which was dismissed *via* the impugned judgment and order.

8. Mr Vikas Yadav, learned counsel, who appears on behalf of the appellants/defendants, submits that the appellants/defendants suffered due to negligence of their advocate.

8.1 It is the submission of Mr Yadav that since they are the residents of Mumbai, they were unable to remain physically present before the trial court and, therefore, had wholly relied upon their advocate.

8.2 It is also the submission of Mr Yadav that in law, the trial court could have passed, on 30.01.2023, an order which would have resulted in the appellants/defendants being proceeded, in the first instance, *ex parte*. Instead, the trial court not only recorded the evidence, but also pronounced the



judgment on the same date after hearing arguments advanced on behalf of the respondent/plaintiff. This methodology adopted by the trial court, according to the appellants/defendants, is contrary to the dicta laid down by the Supreme Court in ***Lal Devi & Anr. vs Vaneeta Jain & Ors.***, (2007) 6 SCR 561.

9. On the other hand, Mr Kunal Kher, learned counsel, who appears on behalf of the respondent/plaintiff, says that the appellants/defendants have been responsible for delaying the proceedings at every stage.

9.1 In this context, our attention has been drawn to the order dated 04.05.2022.

10. Furthermore, it is Mr Kher's submission that the appellants/defendants had actually been served with summons and, therefore, the direction issued by the trial court to proceed *ex parte* against them on 04.05.2022 was in order.

11. In sum, it is the contention of Mr Kher that the impugned judgment and order dismissing the appellants'/defendants' application under Order IX Rule 13 of the CPC ought not to be disturbed.

12. We may note that the respondent/plaintiff has filed a suit for recovery against the appellants/defendants, whereby it seeks to recover Rs.71,23,872/, along with interest at the rate of 6% per annum.

13. Although the appellants/defendants have been careless in not coordinating with their advocate with regard to the prosecution of the suit, we are inclined to take a broad view of the matter, given the fact that they are the residents of Mumbai and, perhaps, for that reason, relied solely on their advocate.



14. Besides this, in our opinion, Mr Yadav's submission that the trial court ought not to have proceeded to record the evidence, hear arguments and pronounce judgment on the same date has weight.

14.1 The observations of the Supreme Court appear to support this contention advanced by Mr Yadav. For convenience, the relevant part of the ***Lal Dev*** judgment is extracted hereafter:

"15. Having regard to the totality of circumstances we are of the view that in the interest of justice this appeal must be allowed. The learned District Judge recorded evidence, heard arguments and posted the matter later in the day for delivery of judgment. If the Court had adjourned the proceedings to another day after deciding to proceed ex-parte, the defendant could have applied for being permitted to participate in the proceedings. In this case since everything happened on the same day the defendant did not get an opportunity to do so. The learned District Judge decided to proceed ex-parte. It thereafter examined the witnesses present in Court and proceeded to hear arguments. It reserved its judgment to be pronounced later in the day. Even before he could pronounce judgment counsel for the defendant had moved an application before him for recall of the order. It is true that in view of the law laid down by this Court in Arjun Singh (supra) the learned District Judge could not have entertained an application under Order IX Rule 7 C.P.C. We have also no hesitation in observing that counsel of the defendant were not careful enough to inform the learned District Judge about their pre-occupation before the High Court which prevented them from being present in his Court when the case was called for hearing. But the passing of an ex-parte decree in a case of this nature is too harsh a consequence to be upheld. The defendant cannot be made to suffer an ex-parte decree particularly when he was not at fault, having duly instructed his counsel to appear before the Court of the learned District Judge."

15. Mr Kher further says that since the appellants/defendants had knowledge of the date fixed by the trial court, i.e., 30.01.2023, sufficient cause was not made out.



16. In our opinion, the reasons given above show that, apart from anything else, the procedure followed by the trial court was flawed. The record discloses that the matter was fixed in the usual course for respondent's/plaintiff's evidence. Had that been done, the appellants/defendants would have had the opportunity to cross examine the witness(es) tendered by the respondent/plaintiff. In any case, as indicated above, the advocate for the appellants/defendants, in a sense, left the appellants/defendants in a lurch; therefore, broadly, there was a sufficient cause for non-appearance on the date given by the trial court.

17. Given this position, we are inclined to allow the appeal with the following directions:

(i) The impugned judgment and order is set aside. The appellants/defendants will be entitled to cross-examine the respondent's/plaintiff's witness. For this purpose, the matter would be listed before the trial court on 06.09.2024. The trial court will, thereafter, fix a date in close proximity for hearing final arguments in the matter.

(ii) The trial court will endeavour to render final judgment in the matter on or before 30.11.2024.

18. Before we conclude, we must put the appellants/defendants to terms for delaying the proceedings. Accordingly, the appellants/defendants will pay costs of Rs.25,000/- to the respondent/plaintiff. The costs will be paid on or before 06.09.2024.



2024:DHC:6500-DB



19. The appeal is disposed of, in the aforesaid terms.
20. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 23, 2024/aj

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: ATUL
JAIN

Signing Date: 28.08.2024
15:28:18

FAO (COMM) 7/2024

Page 6 of 6