
(1994) 04 DEL CK 0026

In the Delhi High Court

Case No : Interim Application No. 11887 of 1991 and Company Appeal No. 3 of 1989

Daya Industries and Others

APPELLANT

Vs

Jaswant Singh

RESPONDENT

Date of Decision : 18-04-1994

Acts Referred:

Citation : (1994) 2 AD 489 : (1994) 54 DLT 315

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : K.L. Aggarwal and Manmohan Singh, for the Appellant;

Judgement

Sat Pal, J.

(1) This is an application filed on behalf of Sardar Jaswant Singh (hereinafter referred to as the respondent) under Order 9 Rule 13 read with Section 151 of the CPC and in this application it has been prayed that ex-parte order dated 13/11/1991 passed by this Court be set-aside and the respondent be allowed to file the affidavit by way of evidence. Notice of this application was issued to the petitioners and the petitioners in their reply dated 15/01/1992 have controverted the averments made in the application.

(2) Mr. Manmohan Singh, learned Counsel appearing on behalf of the respondent/applicant submitted that the respondent had engaged Shri O.P. Sharma, Advocate in this case and it was because of negligence on the part of the said Advocate that the respondent was directed to be proceeded against ex-parte vide orders dated 15/03/1991 and thereafter since the said Advocate did not appear on behalf of the respondent an ex-parte order was passed by this Court on 13/11/1991 whereby the petition was accepted and the design bearing No. 158951 in Clause I dated 16/05/1988 was ordered to be cancelled. The learned Counsel submitted that the respondent should not be allowed to suffer for the inaction or omission on the part of his Advocate. In support of his

contention, learned Counsel placed reliance on a judgment of the Supreme Court in the case of Rafiq and Another Vs. Munshilal and Another, .

(3) Mr. Aggarwal, learned Counsel appearing on behalf of the petitioners /non-applicants, however, submitted that in the present case the respondent and his Counsel both have been negligent right from the initial stage of the case and the applicant had failed to show that there was sufficient cause for the non-appearance of the respondent and his Counsel on a large number of hearings. He submitted that the present case was not one of those cases where it could be said that the respondent was an innocent person having suffered merely because his Advocate defaulted .He further submitted that in the present case the impugned order dated 13/11/1991 had been passed on merits. He, Therefore, contended that the application was without any merit and be dismissed with costs. In support of his contention ,learned Counsel placed reliance on a judgment of this Court in the case of Gloria Chemicals Vs. R.K. Cables and Others, .

(4) I have given my thoughtful consideration to the submissions made by learned Counsel for the parties and have perused the records. From the records, I find that after the notice of the petition was served on the respondent Shri O.P.Sharma, Advocate appeared on behalf of the respondent on 9/03/1989. Thereafter none appeared on behalf of the respondent on 16/05/1989 and 11/09/1989. On 4/10/1989 final opportunity was granted to the respondent to file the reply. The issues were framed on 30/01/1990 and the parties were directed to file affidavits by way of evidence and the case was directed to be listed before the Deputy Registrar on 16/04/1990. However, none appeared on behalf of the respondent on 16/04/1990 and again on 23/05/1990. On 18/07/1990 at the request of learned Counsel for the respondent the case was adjourned to 16/11/1990 for admission/denial of documents. Thereafter none appeared on behalf of the respondent on 16/11/1990 and 14/12/1990. On 4/03/1991 at the request of learned Counsel for the respondent the case was adjourned for 15/03/1991 as the learned Counsel for the respondent wanted to seek instructions from his client. Thereafter none appeared on behalf of the respondent on 15/03/1991 and the respondent was set down ex-parte and the case was fixed for arguments on 23/05/1991. Finally the impugned order were passed on 13/11/1991.

(5) From the facts stated hereinabove, it is evident that even no reply was filed on behalf of the respondent though the respondent was directed to file the reply within four weeks in terms of orders passed on 9/03/1989. From this it is also evident that the respondent was throughout negligent and had not been pursuing his case. As held by this Court in the case of Gloria Chemicals (supra) mistake of the Counsel in certain circumstances can be taken into account for setting aside an ex-parte decree but there is no general preposition that mistake of Counsel by itself is always a sufficient ground. As stated hereinabove, besides the mistake of the Counsel ,the respondent himself had been quite negligent as even no reply

was filed on behalf of the respondent.

(6) In view of the above discussions, I do not find any merit in this application and the same is dismissed. The parties are, however, left to bear their own costs.