

**(1978) 12 DEL CK 0012**

**In the Delhi High Court**

**Case No :** Interim Application No. 2083 of 1978 and Suit No. 66A of 1977

Goodwill India Ltd.

APPELLANT

Vs

Jagir Singh and Others

RESPONDENT

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**Date of Decision :** 07-12-1978

**Acts Referred:**

**Citation :** (1979) ILR Delhi 328

**Hon'ble Judges :** Sultan Singh, J

**Bench :** Single Bench

**Advocate :** S.K. Mehra and Kamlesh Bansal, for the Appellant;

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## **Judgement**

Sultan Singh, J.

(1) This is an application under Order 9 Rule 13 read with Section 151 of the CPC on behalf of respondents I and 2 for setting aside the ex-parte order dated 3rd February, 1978 passed on an application u/s 20 of the Arbitration Act. The applicants respondents 1 and 2 allege that the petitioner filed three petitions u/s 20 of the Arbitration Act, (1) against the present respondent (2) against Sardar Ajaib Singh and others and (3) against Sardar Kripal Singh and others, that Sardar Ajaib Singh informed them on 1st May, 1978 about t

(2) The petitioners have contended (1) that the present application is barred by time, (2) that there is no provision in the Arbitration Act to set aside an order passed ex-parte u/s 20 of the Arbitration Act, and (3) that there is no sufficient cause for setting aside the ex-parte order dated 3rd February, 1978.

(3) Under Article 123 of the Limitation Act an application to set aside ex-parte order, is to be filed within 30 days, from the date of the decree and where the summons or notice was not duly served, from the date when the applicant has knowledge of the decree. It is also provided in this Article that substituted service under order 5 rule 20 of the CPC shall not be deemed to be due service. The applicants in the present case were served by substituted service on an application filed by the petitioner under Order 5 Rule 20 of the CPC and

Therefore the applicants are not deemed to have been duly served for the purpose of Article 123 of the Limitation Act- The applicants came to know of the ex-parte order on 1st May, 1978 and filed the present application for setting aside the same on 9th May, 1978 and Therefore I hold that the present application is within time.

(4) It is contended by the learned counsel for the petitioner that Order 9 Rule 13 of the CPC is not applicable to the facts of the present case as the Order passed u/s 20 of the Arbitration Act is not a decree and Order 9 Rule 13 of the CPC applies for setting aside a decree only. I do not agree. u/s 41 of the Arbitration Act the provisions of the CPC are applicable to all proceedings subject to the provisions of the Arbitration Act, There is no provision in the Arbitration Act excluding application of Order 9 Rule 13 of the CPC to the proceedings under Arbitration Act. I, Therefore, hold that Order 9 Rule 13 of the CPC is applicable to set aside an order passed ex-parte u/s 20 of the Arbitration Act. Learned counsel for the petitioner has cited two judgments Tlr 1975(2) Delhi 57(1) and 1976 Dlt 291(2) but these are not applicable to the facts of the present case. Lastly it is contended by the learned counsel for the petitioner that there is no sufficient cause for setting aside the ex-parte order dated 3rd February, 1978. It is stated on affidavits by the applicants that they never had any knowledge of the present proceedings and that they were never served and that they were not residing at the address given in the petition, and that they have been residing in their villages in Amritsar. The applicants were not duly served for 7th September, 1977 the date of hearing fixed in the case, and Therefore there is sufficient cause for their non-appearance, and on 3rd February, 1978 ex-parte order u/s 20 Arbitration Act was passed. T Therefore set aside the ex parte order dated 3rd February, 1978 by which petition u/s 20 of the Arbitration Act was accepted and the matter was referred to Shri Raj Pal Sagar, Advocate, Delhi. The ex parte order, however, is set aside on payment of Rs. 100.00 as conditional cost-

(5) The present application has been filed only by respondents 1 and 2. After setting aside the ex-parte order dated 3rd February, 1978 against respondents 1 and 2 the said order cannot continue against respondent No. 3 also as there may be conflicting order which may be passed after hearing respondents 1 and 2. I, Therefore, set aside the order dated 3rd February, 1978 against the respondent No. 3 also. I.A. stands disposed of.