
(1998) 09 DEL CK 0132

In the Delhi High Court

Case No : I.A. No. 12879 of 1996 in S. No. 209A of 1990

M. Paul Babuta

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Article 123, 5

Citation : (1998) 6 AD 600

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : S.K. Mittal, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.S.A. Siddiqui, J.—The applicant/respondent has filed this application under Order 9, Rule 13, CPC for setting aside the ex-parte decree dated 27.9.96 passed in Suit No. 209A/90.

2. The facts giving rise to the application under Order 9, Rule 13, CPC are these. The applicant/respondent had entered into a contract with the respondents/petitioners for the construction of two-tier rack system for Publication Godown, Department of Publications, Government of India. Consequent upon certain disputes having arisen between the parties, matter was referred to the Sole Arbitrator for adjudication. On 27.12.1989, the Arbitrator published his award. Thereafter, the respondents/petitioners filed an application for a direction to the Arbitrator to file his award. In the meanwhile, the Arbitrator himself filed the award in this Court. Notice of filing of the award was served on the applicant/respondent. Objections to the award were filed on behalf of the applicant/respondent herein. These objections were registered as is No. 4054/90. On 19.12.1991, issues were framed and parties were directed to file evidence by way of affidavits. However, the parties filed their affidavits and the case was listed for final disposal. On 13.2.96, there was no appearance on behalf of the

applicant and Court's notice was ordered to be issued to Shri Madan Lokur, Standing Counsel for the applicant herein. Despite service of notice, Shri Madan Lokur did not appear on 1.5.96 and the case was adjourned to 26.9.96. On that date also, none appeared on behalf of the applicant and the case was adjourned to 27.9.96. On 27.9.96, the applicant's objections (IA No. 4054/90) were dismissed as none appeared on behalf of the applicant and an ex parte decree in terms of the award was passed.

On 12.12.96, the applicant filed the present application under Order 9, Rule 13, CPC for setting aside the ex-parte decree on the ground that the applicant's Counsel Ms. Savita Sharma, Advocate did not appear before the Court on 27.9.96 as she had ceased to be applicant's Counsel and she also did not inform the applicant about the said date. It was also stated in the application that the applicant was not aware of the ex-parte decree dated 27.9.96 until receipt of the respondent's letter on 27.11.96.

3. In opposition of this application two points are urged before me. The first is that the application is barred by time and no application u/s 5 of the Limitation Act has been filed seeking condensation of delay. The second is that the applicant has utterly failed to assign any sufficient cause for its non-appearance before the Court on 27.9.96.

4. Needless to say that the present application under Order 9, Rule 13, CPC is governed by Article 123 of the Limitation Act Under the said Article, time runs from the date of the decree, or where the summons was not duly served, from the date when the applicant has knowledge of the decree. Learned Counsel for the applicant contended that the applicant got the knowledge of the ex-parte decree on 27.11.96 from the respondent's letter dated 26.11.96 and as such the present application is within time. In my opinion, this is not the case which can be covered from the date of knowledge of the decree because it is not the case of the applicant that the decree was passed without service of summons. On the contrary, the applicant's case is that the ex-parte decree was passed owing to non-appearance of its Counsel on 27.9.96. In M/s. Bhagwan Dass Bros. Vs. Ghulam Ahmed Dar and others, , it was held that where summons has been duly served, the date of the applicant's knowledge of the ex-parte decree is immaterial and the time will run from the date of the decree. The present application has been filed after 30 days from the date of the decree. The applicant has not filed any application u/s 5 of the Limitation Act seeking condensation of delay in filing the application under Order 9, Rule 13, CPC. Thus the conclusion is inescapable that the present application is barred by time,

Even on merits, the application deserves to be dismissed. Learned Counsel for the applicant referred to the order dated 27.9.96 and urged that an ex-parte decree was passed because no one had appeared on behalf of the applicant on that date. It is worth mentioning that on 13.2.96, none appeared on behalf of the applicant and instead of proceeding ex-parte against the applicant, Court's notice for 1.5.96 was issued to Shri Madan Lokur, Advocate, who was the

Standing Counsel for the Union of India. Despite service of the said notice on Mr. Madan Lokur, none had appeared on behalf of the applicant on 1.5.96 and the case was adjourned for 26.9.96. On that date, none appeared on behalf of the applicant and the case was adjourned to 27.9.96. Again on 27.9.96, none appeared on behalf of the applicant as a result whereof the Court proceed ex-parte against the applicant and passed the ex-parte decree in question. In this view of the matter, it is difficult to hold that the applicant was pursuing the case bonafide and diligently .It was not even pleaded in the application that the applicant was neither careless nor negligent in pursuing the case. It is pertinent to mention that by engaging a Counsel, a party to the case is not relieved of his duties and obligations in the matter. Where a party either does not brief the Counsel or keeps no contact with him, it is the party who is in default and negligent and shall have to bear consequences. Where a party to the case is prima facie in default, the negligence of the Counsel also cannot come to aid in an application under Order 9, Rule 13, CPC to establish sufficient cause for setting aside an ex-parte decree. A perusal of the record of the Civil Suit No. 209A/90 clearly reveals that the applicant was careless and negligent in defending the matter. Consequently, I find and hold that the applicant has failed to assign any sufficient cause for setting aside the ex-parte decree dated 27.9.96.

5. For the reasons discussed above, the application under Order 9, Rule 13 is dismissed. No order as to costs.