

(2014) 03 DEL CK 0313
In the Delhi High Court
Case No : FAO No. 148 of 2012

Maruti Sale Trading Co.

APPELLANT

Vs

Gurdial Chand Khosla Decd. Thru. Lrs.

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 37, Order 9 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2014) 03 DEL CK 0313

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.C. Kalra and Mr. V.K. Mehra, for the Appellant; C.P. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This first appeal is filed against the impugned judgment of the court below dated 9.11.2011 which has dismissed the applications filed by the appellant-plaintiff under Order 9 Rule 9 CPC and Section 5 of the Limitation Act, 1963. By the applications, the appellant-plaintiff sought restoration of the suit for recovery of Rs. 17,50,000/- filed under Order 37 CPC, and which was dismissed in default on 30.3.2009. Appellant-plaintiff filed the subject suit for recovery of money on the ground that he had given a friendly loan to late Sh. Gurdial Chand Khosla, and who is now represented before the court below by his widow Smt. Sudhershnan Khosla. Summons in the suit for appearance under Order 37 CPC were issued and the defendant filed appearance. Suit was dismissed in default on 30.3.2009 when no one appeared for the appellant-plaintiff.

2. The case of the appellant-plaintiff is that his earlier lawyers kept him in the dark by not informing him of the dismissal in default of the suit, and when in June-July, 2010, counsels started avoiding him, it transpired to him that actually the suit was dismissed in default much earlier in March, 2009. Appellant-plaintiff

claims to have been befooled/duped by his earlier counsels and consequently appellant-plaintiff has also filed complaint with the Bar Council of Delhi on 15.9.2010. After obtaining the goshwara number of the disposed of suit, and which is given to the suit record after disposal of the suit, and the necessary particulars were obtained, thereafter the subject applications were filed for restoration of the suit. There is therefore on account of the aforestated facts a delay of 534 days in filing the application for restoration.

3. Learned counsel for the appellant-plaintiff argued that there is no reason why the appellant-plaintiff would not pursue his suit especially because the suit was for a huge amount of Rs. 17,50,000/-, and, with respect to which, not only court fees were paid but fees of the counsel were also paid. It is argued that appellant-plaintiff should not be made to suffer for the negligence and the default of his earlier counsel against whom complaint has already been filed with the Bar Council. It is argued that the appellant-plaintiff was told by his earlier counsel that no personal appearance is required in a civil suit because the case is not a criminal case and hence appellant/plaintiff/sole proprietor did not appear in the court on every date fixed by the court. It is therefore prayed that the court below has erred in not restoring the suit and has illegally dismissed the applications under Order 9 Rule 9 CPC and Section 5 of the Limitation Act, 1963.

4. On behalf of the respondent, it is very vehemently argued that the appellant-plaintiff is guilty of delay and negligence. It is argued that the complaint to the Bar Council has already been filed only on 15.9.2010, and that enquiries before the Bar Council reveal that adequate number of complaints have not been filed and that it is not supported by affidavit. It is argued that in the facts of the present case, there is no ground for allowing of the appeal and restoration of the suit.

5. In my opinion the appeal deserves to be allowed because there is no reason why appellant-plaintiff would be guilty of negligence or deliberate inaction for getting a suit for recovery of a huge amount of Rs. 17,50,000/- dismissed in default and where not only court fees were paid but counsel fees have also been paid. There is nothing unnatural for the appellant-plaintiff in relying upon the assurance by its advocates that no personal appearance is required, and which is a normal procedure in a civil suit. It is only when the appellant-plaintiff's advocates started avoiding him that the appellant on realizing the seriousness made detailed enquiries and came to know of dismissal in default of the suit. The stand of the appellant-plaintiff in my opinion is buttressed by complaint having been made against the earlier advocates with the Bar Council of Delhi.

6. Though learned counsel for the respondent has very vehemently argued that there is no ground for condonation of delay, I cannot agree because in civil suit appearance on every date of a plaintiff is not required. It is nothing unnatural for the advocates to be trusted and I do not agree that there can be said to be negligence on behalf of the appellant-plaintiff, much less deliberate negligence, once the suit is for recovery of a large amount and appellant-plaintiff has

incurred expenses towards court fees and lawyers fees.

7. At this stage, one is reminded of the ratio of the judgment of the Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, and which holds that whenever there is delay some amount of oversight or negligence is implicit, however, the same cannot prejudice a person unless negligence is on account of want of good faith or negligence is a criminal negligence. Also, it has been consistently held by the Supreme Court in various judgments that a party should not suffer for the fault of his advocate.

8. In view of the above, the appeal is allowed. The impugned order dated 9.11.2011 is set aside. The suit of the appellant-plaintiff will stand restored to its original number. Let the parties appear before the District & Sessions Judge (North West), Rohini, Delhi on 6th May, 2014 and District & Sessions Judge will mark the suit for disposal to a competent court in accordance with law.