
(2012) 08 KAR CK 0348
In the Karnataka High Court
Case No : M.F.A. No. 9836 of 2010

M/s. Indian Overseas Bank

APPELLANT

Vs

Shri V.J. Sainarayan

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2012) 08 KAR CK 0348

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Deepak and Sri. V. Jayaram, for the Appellant; A.K. Lakshmanan, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda

1. The matter is listed for admission. With the consent of learned Counsel for parties, it is taken up for final disposal. Heard the learned Counsel appearing for parties.

2. The trial Court has rejected the application filed by petitioners to set aside the exparte decree made in O.S.No. 1908/2008. It is seen from the records that petitioners/defendants have filed written statement. However, after examination-in-chief of plaintiff was filed, plaintiff was not cross examined. Therefore, the learned trial Judge passed the decree.

The learned trial Judge dismissed miscellaneous petition holding that petitioners have failed to establish sufficient cause and petitioners had failed to produce the copy of "A" Diary.

3. In my considered opinion, the reasons assigned by the learned Sessions Judge are not tenable. The law is fairly well settled for the purpose of considering sufficient cause to set aside the decree under Order IX Rule 13 CPC, the Court

should have a liberal approach and endeavour to decide the case on merits unless it is found that the defaulting party has deliberately protracted and dragged on the proceedings to avoid decision of suit on merits.

4. The petitioner M/s. Indian Overseas Bank is represented by its officers. Therefore, it cannot be said that petitioner had intention to delay or drag on the proceedings. In the circumstances, I deem it proper to set aside the impugned order by putting petitioners to certain terms. In the result, I pass the following order:

The appeal is accepted. The impugned order is set aside. The learned trial Judge is directed to restore the suit and decide the suit on merits within a period of six months from today. The petitioner/bank shall deposit. 50% of amount in terms of impugned decree within a period of one month from today. The deposit of the amount is a condition precedent for petitioners/defendants to contest the suit before the trial Court. The amount deposited by petitioners shall be paid to the successful party towards full satisfaction or part satisfaction of the decree.