

(2013) 07 RAJ CK 0117

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1651 of 2011

M/s. Rao Construction Company and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

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

Citation : (2013) 3 WLN 410

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : S.K. Sankhla, for the Appellant; Dinesh Godara for Mr. V.K. Mathur, Advocate for UOI, for the Respondent

Judgement

Arun Bhansali, J.—Heard learned counsel for the parties. The appellants-defendants are aggrieved against rejection of their application filed under Order IX, Rule 13 CPC.

2. The brief facts of the case are that respondent No. 1 plaintiff filed a suit for a sum of Rs. 22,43,429/- seeking compensation against the appellants on account of their failure to execute the work in terms of the contract executed between the parties. The suit was filed on 31.05.2002.

3. The appellants were duly served and were represented by counsel before the learned trial Court. However, no written statement was filed despite providing six opportunities and thereafter the evidence of the plaintiff was recorded and the suit was decreed ex parte on 03.12.2005.

4. An application was filed under Order IX, Rule 13 CPC on 09.01.2006, inter alia, with the contentions that the counsel was engaged by the defendants and they were assured by the counsel that as and when there would be any requirement, he would inform them. However, no information was received from the counsel and the suit has been decreed ex parte. It was further contended that Sumer Bhai, one of the defendants was not well during the said period and,

therefore, for the mistake of the counsel, the parties should not be made to suffer.

5. The application was opposed by the plaintiff and the learned trial Court after hearing the parties dismissed the application for it did not find any justification for the nonappearance of the defendants.

6. It is submitted by learned counsel for the appellants that the appellants were prevented by sufficient cause from appearing before the learned trial Court as they were dependent on the information from their counsel. It was further submitted that one opportunity may be granted to them to defend the suit as in absence thereof they would be suffering irreparable injury.

7. The above contentions have been vehemently opposed by learned counsel for the respondent. It was pointed out that the conduct of the appellants is highly negligent in not attending the Court. However, as soon as the ex parte decree was passed on 03.12.2005, the application seeking setting aside ex parte decree was filed on 09.01.2006, which apparently shows the mala fide conduct of the appellants.

8. I have considered the rival submissions made at the Bar. The learned trial Court while considering the application filed by the appellants has mainly relied on the letter dt. 05.12.2004 written by counsel for the appellants to the appellants specifically pointing out that despite his repeated efforts in seeking instructions, the instructions are not forthcoming and, therefore, in absence thereof, if any order is passed against them, the counsel would not be responsible. The appellants in their appeal have not questioned the veracity of the said letter produced before the trial Court nor any submission seeking to question the said letter has been made. The said letter clearly belies the submissions made by the appellants in their application under Order IX, Rule 13 CPC, which in view of letter dt. 05.12.2004 was rightly rejected by the learned trial Court.

9. The standard contentions raised by the applicants in application under Order IX, Rule 13 CPC that the counsel assured them that as and when there would be any requirement he would inform them and that the counsel failed to inform the applicants is essentially wholly baseless, inasmuch as, the dates are regularly fixed in the learned trial Court and it is the responsibility of the party to contact his counsel from time to time and take steps for defending/prosecuting the case and he need not be dependent on the counsel informing him to do the needful. In that view of the matter, there is no substance in this appeal and the same is, therefore, dismissed.