
(2005) 02 DEL CK 0214

In the Delhi High Court

Case No : Civil Revision Petition No. 1197 of 2003

New Delhi Municipal Council and Others

APPELLANT

Vs

Sohan Lal

RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 7, 115

Citation : (2005) 122 DLT 653

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : Jyoti Singh, for the Appellant; Daljinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Mahajan, J.

CRP No. 1197/2003 & CM No. 2709/2003

1. The present petition is directed against the order dated 1.9.2003 passed by Addl. District Judge, Delhi dismissing the appeal of the petitioner.

2. Briefly the facts are that the respondent filed a suit for damages and mesne profits against the petitioner. On account of non-appearance of the Counsel for the petitioner on 16.5.1996, the petitioner was proceeded ex parte. The petitioner filed an application under Order 9 Rule 7, CPC for setting aside the ex parte order. The application was also dismissed on 8.12.1997. Thereafter, the learned Civil Judge passed ex parte judgment dated 2.9.1998 in favor of the respondent passing a decree of Rs. 27,096/- against the petitioner. Aggrieved by the said judgment, the petitioner filed an application under Order 9 Rule 13, CPC which was also dismissed by Civil Judge on 14.5.1999, Thereafter, the petitioner filed an appeal before the learned Addl. District Judge, Delhi which was also dismissed. It is stated that as per the procedure of the petitioner, one Mr. D.P. Vats, Attorney was attached with the Counsel for the petitioner. The said attorney handed over the charge to Mr. Pradeep Sharma, Attorney, who after taking over

the charge absented himself from the office for more than three months. The keys of the almirah in which the case files and case diary were kept by him were with Mr. Pradeep Sharma.

3. Learned Counsel for the petitioner contends that non-appearance of the Counsel for the petitioner was neither intentional nor deliberate but due to the fact that the petitioner's clerk who had kept the case files and case diary in the almirah was absenting himself from the office for more than three months and Therefore the case file could not be made available to the Counsel for petitioner.

4. The petition is opposed by Counsel for the respondent. Learned Counsel contends that since the petitioner failed to show sufficient cause for non-appearance before the Trial Court, the petitioners were rightly proceeded ex parte. The orders of the Trial Court and the learned Addl. District Judge are reasoned orders and the petitioner has failed to show jurisdictional infirmity in the said orders. The powers of the Court u/s 115 of the CPC are limited to the extent that only a jurisdictional infirmity can be cured by the Courts. Reliance has been placed on Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas and Another, .

5. I have heard learned Counsel for the parties and also perused the order of the Trial Court as well as of the Appellate Court.

6. The learned Addl. District Judge in the impugned order has observed that the application under Order 9 Rule 13, CPC is supported by the affidavit of Counsel for the petitioner. No material was placed on record to show that Counsel was authorised on behalf of the petitioner to swear the affidavit. The averments made in the application under Order 9 Rule 13, CPC reflect negligence on the part of the attorney of the petitioner and no Explanation is forthcoming for his absence for almost seven months. No material had been placed on record to establish that the said attorney was in fact absent during the said period. No departmental action appeared to have been taken against the said attorney. The averments made in the application were not in the personal knowledge of the Counsel as he was not associated with the case during trial. It was also observed that the petitioner failed to establish sufficient cause for non-appearance. It was also observed that after the petitioner was proceeded ex parte, the suit remained pending in the Trial Court for almost two years and the petitioner or its Counsel took no steps to pursue the suit. If the attorney was not available, alternate arrangements ought to have been made. It is not stated as to what efforts were made to locate the attorney or the files. Inaction and callous approach is writ large and does not merit indulgence of this Court.

7. The scope of revisional jurisdiction u/s 115, CPC is restricted and it is only where there is a jurisdictions error or illegality or material irregularity in the exercise of jurisdiction that this Court can interfere. It is well settled that in exercise of jurisdiction, the finding of fact recorded by the Courts below cannot be reversed.

8. In Harshavardhan Chokkani Vs. Bhupendra N. Patel and Others, , the Supreme Court held as under:

"...Nonetheless, the High Court is exercising the revisional power which in its very nature is a truncated power. The width of the powers of the revisional Court cannot be equated with the powers of the Appellate Court. In examining the legality and propriety of the order under challenge, what is required to be seen by the High Court is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It is only in such situations that interference by the High Court in revision in a finding of fact will be justified. Mere possibility of a different view is no ground to interfere in exercise of revisional power...."

In view of the aforesaid discussion, in my considered opinion, the impugned order is a well reasoned order and does not suffer from any jurisdictional error, illegality or material infirmity which calls for interference by this Court under the revisional power u/s 115 of the Code of Civil Procedure. The findings are neither perverse nor have resulted in any injustice to the petitioners.

Dismissed.