
(2010) 07 DEL CK 0129

In the Delhi High Court

Case No : Mac. Appeal No. 159 of 2007

New India Assurance Co. Ltd.

APPELLANT

Vs

Shri Preet Pal Singh and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

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

Citation : (2010) 173 DLT 113

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : D.K. Sharma, for the Appellant; H.N. Vashistha, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this appeal, the appellant has assailed an order dated 1st December, 2006 passed by the learned Motor Accidents Claim Tribunal whereby an application of respondent No. 1 under Order IX Rule 13 CPC was allowed and the award dated 11th January, 2005 passed by the Tribunal was set aside to the extent of giving him an opportunity to prove that there was no breach of obligation of the policy by him.

2. As per the record, a claim petition was filed in September, 1998. Notice of this petition was ordered to be sent to respondent No. 1, that is, applicant, being the owner of the offending vehicle for 16th December, 1998. The process of respondent No. 1 was received back unserved. However on 16th December, 1998, the Presiding Officer of the Tribunal was on leave. The Court Master/Reader of the court had to give dates to the litigants and while giving dates, he fixed this case for 7th April, 1999 for compliance of previous order of the court. The summons were again sent to respondent No. 1 for 7th April, 1999 and the summons were served upon respondent No. 1. However, respondent No. 1 did not put appearance on 7th April, 1999. The learned Tribunal ordered for proceeding respondent No. 1 as ex-parte. However on subsequent date, it

seems, Tribunal did not notice its earlier order and again ordered for service of respondent No. 1 for 4th August, 1999. The summons were sent through registered cover to respondent No. 1. The postman visited house of addressee/respondent No. 1 for seven days continuously and the occupants of the house were informed by him about the registered letter but respondent No. 1 did not make himself available to receive the registered letter, nor he directed any other family member to receive the court notice on his behalf. This was despite the fact that he had already received summons sent through court for 7th April, 1999. The postman gave his report that respondent No. 1 was not available despite repeated visits. The Tribunal after seeing that the respondent was deliberately not appearing in the court proceeded ex-parte and trial of claim petition was completed and award passed.

3. In the application, the applicant/judgment debtor raised an issue that the service of judgment debtor effected on the basis of order of Court Master/Reader was technically no service and this argument was accepted by the learned Tribunal. I consider that the Tribunal went wrong in accepting this argument of the judgment debtor.

4. Whenever a judicial officer or a Tribunal is on leave or is not able to hold the court due to some reason, the Court Master/Reader has to entertain the litigants and give them next date of hearing. This function of the Court Master/Reader is a lawful function being performed by an official of the court under the authority of the judge/Tribunal. This function is a ministerial function. The Court Master/Reader who gives dates to the litigants, in fact tells the litigants that they have to appear on the next date of hearing. The Court Master/Reader commits no wrong if he tells the litigant that on next date of hearing the matter will be taken up for the same cause for which the case was fixed on the date when the judicial officer was absent. Such an order is a perfectly lawful order. Neither the Court Master/Reader commits any illegality by telling the litigants that the previous order passed by the court, if has not been complied with, should be complied with. The purpose of CPC is not to harass the litigants but to see that the court is managed in a proper and effective manner and proceedings are done as per law. It is not in the interest of the litigants or justice that the Court Master/Reader fixes all the cases for proper order since the judge was absent. If he has authority to adjourn the case and give next date of hearing, he has authority to fix the case for the same purpose for which the case was fixed on the date when the judge was absent. Fixing cases for proper order means wastage of crucial time of the court on next date when the court has to take all those cases again and pass an order as to for what purpose the case would be taken up on subsequent date of hearing. An unscrupulous litigant can take benefit of such routine order of fixing cases for proper order and stop appearing on the ground that there were no directions of the court to appear and the court should have summoned him de novo. The court can delegate ministerial functions to its staff and these functions are routinely delegated. The summons of cases sent to various parties are not signed by the judge personally but are signed by the

ministerial staff under the authority of the judge although summons sent to a party are the directions issued by the judge for appearance in the court on a particular date for discharging a particular function.

5. I, therefore, consider that when a Court Master/Reader, in case of Tribunal/judicial officer not holding the court passes an order directing parties to appear on a particular date and fixes the case for the same function which was to be discharged on that day and tells the parties to comply with the order passed by the court on previous hearing, he does no illegal act nor such an order can be considered as an illegal order or unauthorized order. I, therefore, find that Tribunal wrongly came to the conclusion that the Court Master/Reader's order of fixing the case for 7th April, 1999 for compliance of previous order was technically wrong.

6. If the Tribunal had inadvertently again issued summons to the respondent/judgment debtor that does not amount to any illegality nor that gives a right to the judgment debtor to take the court for a ride and not to appear in the court or to evade service. The whole effort of the judgment debtor in this case had been to defy the court summons and not to appear. The court summons duly served on judgment debtor for his appearance on 7th April, 1999 did not mention that the summons were sent on an order passed by the Court Master/Reader, when the judge was on leave. The summons were sent in routine performa and received by the judgment debtor. The judgment debtor/respondent No. 1 had no reason to ignore the summons and not to appear. If he ignored the summons and did not appear, he did so at his own peril. He cannot be heard to say that these summons were technically wrong and, therefore, he had a right not to appear in the court. The summons sent to a party, whether under the orders of the court or because of Reader's order is an intimation to the party to appear in the court. The party cannot disregard the summons. Non-appearance of the party, therefore, has to be considered as a deliberate non-appearance and the consequences have to follow. The subsequent conduct of the judgment debtor/respondent in not receiving the registered cover sent to his address despite postman's continuous visit to his house for seven days and not instructing his family members to receive the registered cover shows that the respondent had determined not to honour summons of the court and not to appear. No mercy can be shown to such respondent who deliberately defy court orders and do not appear in the court thinking and presuming that any order passed by the court can be got set aside on making lame excuses. It is because of this attitude that cases in this country do not get decided for years together and the get struck up at service stage for years together since the respondent defy court summons with immunity and the courts set aside ex-parte orders in a casual manner.

7. In Sunil Poddar and Others Vs. Union Bank of India, , the Supreme Court had considered the legal position under Order IX Rule 13 CPC and observed as under:

18. It is, therefore, clear that the legal position under the amended Code is not whether the defendant was actually served with the summons in accordance with

the procedure laid down and in the manner prescribed in Order V of the Code, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether he had sufficient time to appear and answer the claim of the plaintiff. Once these two conditions are satisfied, an ex parte decree cannot be set aside even if it is established that there was irregularity in service of summons. If the Court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non service of summons for setting aside ex parte decree passed against him by invoking Rule 13 of Order IX of the Code. Since the said provision applies to Debt Recovery Tribunals and Appellate Tribunals under the Act in view of Section 22(2)(g) of the Act, both the Tribunals were right in observing that the ground raised by the appellants could not be upheld. It is not even contended by the appellants that though they had knowledge of the proceedings before the DRT, they had no sufficient time to appear and answer the claim of the plaintiff-bank and on that ground, ex parte order deserves to be set aside.

(emphasis added)

8. In view of law laid down by the Supreme Court in Sunil Poddar's case (supra), I consider that once the respondent had received summons of the court whether it was sent because of the orders of the Court Master/Reader or otherwise, he had information to appear in the court and since he failed to appear in the court, he was rightly proceeded ex-parte and ex-parte award was passed. Such an award cannot be set aside on the ground that the order passed by the Court Master/Reader was technically not sound.

9. I, therefore, allow this appeal. The order dated 1st December, 2009 passed by the learned Tribunal is hereby set aside.