
(2016) 05 AHC CK 0176
In the Allahabad High Court
Case No : Civil Revision Defective No. 169 of 2015

Onkar Nath

APPELLANT

Vs

Civil Judge Senior Division Gonda and another

RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

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

Citation : (2016) 2 ARC 551

Hon'ble Judges : Rakesh Srivastava, J.

Bench : Single Bench

Advocate : Om Prakash Mishra, Advocate, for the Appellant; Awadhesh Kumar Mishra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Srivastava, J.—List has been revised. No one appears on behalf of the respondent.

2. Heard Shri Om Prakash Mishra, learned counsel for the revisionist.

3. This revision has been filed challenging the order dated 21.4.2015 passed by the Civil Judge (Senior Division), Gonda by means of which Regular Suit No.470 of 2001 (Shesh Nath v. Onkar Nath) was ordered to proceed ex parte against the defendant-revisionist as also against the order dated 24.11.2015 by means of which the application (Ga-2/193) moved by the revisionist under Order 9, Rule 7 CPC for recall of the order dated 21.4.2015 and for an opportunity to lead evidence has been rejected.

4. Shesh Nath ? the respondent-revisionist filed a Regular Suit No. 470 of 2001 (Shesh Nath v. Onkar Nath) for setting aside the judgment dated 27.10.1998 and decree dated 3.11.1998 passed in Regular Suit No.532 of 1998 in which the revisionist was arrayed as one of the respondent. In the said case 21.4.2015 was the date fixed. On the said date the suit was ordered to proceed ex parte against the revisionist. The revisionist thereafter moved an application (Ga- 2/193) for

setting the order dated 21.4.2015 and for an opportunity to lead evidence. In the application (Ga-2/193) moved by the revisionist under Order 9, Rule 7 CPC for recall of the order dated 21.4.2015 it was stated that on 21.4.2015 the revisionist was present in the court and after informing the peshkar of the court he went to call his counsel but the counsel of the revisionist was arguing a case in another court. The revisionist returned back to request the court to pass over his case but he was informed that the case had been adjourned and the next date fixed was 9.7.2015. The revisionist after putting his signature on the order-sheet came back. On 9.7.2015, the counsel for the revisionist inspected the order-sheet and then it transpired that on 21.4.2015 the case was ordered to proceed ex parte against the revisionist. The application was orally resisted by the plaintiff-respondent contending that no good cause had been shown by the revisionist for his non-appearance on 21.4.2015.

5. The learned Civil Judge (Senior Division) has rejected the application under Order 9, Rule 7 CPC moved by the revisionist on the ground that on 21.4.2015, the revisionist was absent and the counsel for the revisionist had not moved any application for adjournment of the case as a result of which, the case was ordered to proceed ex parte. The Civil Judge after taking into account the fact that there was an order passed by this Court for deciding the suit expeditiously and on three occasions earlier recall applications were moved by the revisionist, concluded that the approach of the revisionist was completely indifferent and he was deliberately trying to delay the matter.

6. Aggrieved by the rejection of his application (Ga-2/193), the revisionist has preferred this Civil Revision.

7. Assailing the impugned order, the learned Counsel for the revisionist has submitted that the revisionist had a good cause for his non-appearance before the court on 21.4.2015 and as such the order to proceed ex parte against the revisionist was liable to be recalled.

8. The only point that arises for consideration in this revision is as to whether the Tribunal was right in declining to recall the order dated 21.4.2015 for the reasons stated in the impugned order.

9. Rule 7 Order 9 CPC reads as under:?

"Rule 7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

"Where the Court has adjourned the hearing of the suit ex parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance."

10. A bare perusal of Order 9, Rule 7 CPC would show that where the court has adjourned the suit ex parte and the defendant at or before such hearing appears

and assigns good cause for his previous non-appearance, the Court subject to such terms as to costs or otherwise may recall the ex parte order and the defendant be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

11. In the case of Arjun Singh v. Mohindra Kumar, (1964) 5 SCR 946 the Apex Court has held that there was no difference between the words "good cause" for non-appearance in O. IX Rule 7 and "sufficient cause" for the same purpose in O. IX Rule 13 as there was no material difference between the facts to be established for satisfying the two tests of "good cause" and "sufficient cause". It was observed that either of two were not different from "good and sufficient cause" which was used in this context in other statutes. It was held that if at all there was any difference between the two, it was the degree of proof, in as much as, the requirement of a "good cause" was complied with on a lesser degree of proof than that of "sufficient cause".

12. In the case of G.P. Srivastava v. R.K. Raizada, (2000) 3 SCC 54, the Apex Court has held that the words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties, particularly, when no negligence or inaction is imputable to erring party. In paragraph 7 of the said report the Apex Court held as follows: -

"7.....The courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non appearance of the defendant on the date fixed for hearing when ex-parte proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not malafide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

13. In the case of Parimal v. Veena, (2011) 3 SCC 545, the Apex Court in paragraph 15 has held as under:

"15. While deciding whether there is sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it."

14. No doubt, the consideration of the existence of "good cause" is discretionary power with the Court but such discretion has to be exercised on sound principles and not on mere technicalities. Order 9, Rule 7 CPC is a rule of procedure. It is

settled by a catena of decisions of the Apex Court that the rule of procedure are meant to advance justice and should be so interpreted as not to make them penal statute for punishing erring parties. The words "good cause" in the rule should be liberally construed. The approach of the Tribunal in such matters should be to advance the cause of justice and not the cause of technicalities. The parties, as far as possible, should not be deprived of an opportunity to get their cases examined on merits.

15. Keeping in view the above principles of law laid down by the Apex Court it has to be seen, as to whether, in the present case, the revisionist had a good and sufficient cause for his non appearance on 21.4.2015.

16. Admittedly, in the instant case, no written objection was filed by the plaintiff-respondent to the application under Order 9, Rule 7 CPC (Ga-2/193) moved by the revisionist for recall of the order dated 21.4.2015 and as such the averments made by the revisionist that he was present in the court on 21.4.2015 and had gone to call his advocate remained uncontroverted. Moreover, the past conduct of the revisionist, which had also been condoned, could not have been taken into consideration while disposing of the application for recall of the ex parte order. The Civil Judge has adopted a very narrow and hyper-technical approach in dealing with the matter despite the fact that the revisionist had put a reasonable defence.

17. In view of the above, this Court is of the opinion that the revisionist has succeeded in showing "good cause" for his nonappearance on 21.4.2015 when the case was called up for hearing.

18. Consequently, the revision is allowed. The impugned order dated 24.11.2015 passed by the Civil Judge (Senior Division), Gonda as also the order dated 21.4.2015 are set aside on the condition that the revisionist shall deposit a sum of Rs.10,000/- before the Civil Judge (Senior Division), Gonda within a period of six weeks from today. On the said sum of Rs.10,000/- being deposited, it would be open to the plaintiff-respondent to immediately withdraw the same unconditionally. In the event of deposit being made within time, the Civil Judge (Senior Division), Gonda shall offer an opportunity to the revisionist to lead evidence on the date fixed for the purpose. In case the cost, as indicated above, is not deposited, the order passed by the Civil Judge (Senior Division), Gonda shall stand confirmed and this revision shall stand dismissed.

19. Since the matter is of the year 2001, the Civil Judge (Senior Division), Gonda, after giving an opportunity to the revisionist to lead evidence, shall decide the suit on merits within a maximum period of six months from the date of receipt of a copy of this order. The Civil Judge (Senior Division), Gonda may refuse to grant any avoidable adjournment, which may have the effect of delaying the hearing of the suit.

20. Nothing, stated above, shall amount to an expression of an opinion on the merits of the suit.