
(2007) 10 DEL CK 0282
In the Delhi High Court
Case No : FAO (OS) No. : 49 of 2007

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Amit Goel and Another

RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 5

Citation : (2007) 9 ILR Delhi 1 Supp

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : A.K. Bajpai, for the Appellant; Sunil Magon, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 5th February, 2007 whereby the application filed by the appellant under Order IX, Rule 13 and also the application u/s 5 of the Limitation Act were dismissed by the learned Single Judge. The respondent herein filed a suit for recovery of Rs. 26,14,981/- against the appellant on account of insurance claim. It was stated that machinery, which was insured for Rs. 49,00,000/- as per the policy dated 27th January, 1997 for the period 27th January, 1997 to 26th January, 1998 had been damaged.

2. In the aforesaid suit, summons were also issued to the defendant-appellant, which were served on the said appellant on 13th February, 2002. However, despite service of the summons, no written statement was filed on behalf of the appellant although counsel for the appellant had appeared on several dates thereafter i.e. 13th August, 2002, 3rd April, 2003, 28th April, 2003 and 7th August, 2003. As no written statement was filed despite several opportunities, the appellant-defendant was proceeded ex parte. The counsel for the appellant-defendant also stopped appearing. After about 4 years an ex parte decree was passed on 11th December, 2006.

3. We have perused the judgment and decree passed by the learned Single Judge on 11th December, 2006 whereby the decree was passed for an amount of Rs. 26,14,981/- along with interest @ 12% per annum, which is pendente lite and future interest. Subsequent thereto, an application under Order IX, Rule 13 of CPC was filed by the appellant upon initiation of the execution case by the respondent, which was registered as Execution Case No. 253/2006. As the said application was barred by limitation, an application u/s 5 of the Limitation Act was also filed by the appellant. All the aforesaid applications were taken up for consideration by the learned Single Judge and the same were dismissed on the grounds recorded in the impugned order.

4. Being aggrieved by the same, the present appeal is filed on which we have heard learned counsel for the appellant as also the counsel for the respondent. One of the contentions raised before us by the learned counsel for the appellant is that interest at double rate is being claimed and is ordered to be paid by the executing court. Learned counsel for the respondent, however, vehemently denies the aforesaid statement and states that what is sought to be recovered by the appellant was simple interest @ 12% per annum, which is in the nature of pendente lite and future interest. The impugned judgment and decree passed in the suit orders for payment of the principal amount along with interest at the aforesaid rate and the same is being sought to be recovered by filing the execution case in terms of the decree. In fact, on going through the records, we find that learned Executing Court has held that interest @ 18% per annum is shown recoverable under the decree sheet prepared by the Registry, which is incorrect. It was ordered by the learned Single Judge that the principal amount was recoverable along with pendente lite and future interest from 3rd January, 2002 @ 12% per annum and cost after correcting the said error. Executing Court has issued an order of attachment for the aforesaid amount only. If the appellant has any further grievance, the same is open to be raised before the Executing Court and not by filing an appeal against an order rejecting an application under Order IX, Rule 13 of Code of Civil Procedure.

5. Other contention which is raised by the learned counsel for the appellant is with regard to dismissal of his application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908. Counsel submits that the appellant came to know about the fact of ex parte proceedings in the suit only in 2006. The aforesaid contention raised is found to be without any merit and according to us the appellant was throughout grossly negligent in prosecuting the aforesaid suit. There was lack of reasonable care and caution on the part of the appellant, which is disclosed from bare reading of the records of the suit. Although the appellant was served on 13th February, 2002, the suit proceeded without filing of a written statement by the appellant till September, 2003. Counsel appearing for the appellant went on taking adjournment after adjournment till the matter was directed to be proceeded ex parte in absence of the written statement. The said order was passed on 3rd September, 2003. The appellant did not take steps to file written statement and contact their advocate, to find out about the progress

of the case. Even after 2003, the appellant did not wake up from the deep slumber. The suit to be decreed ex parte in 2006. Now after a gap of four years, when the decree is passed, an application was filed putting the entire blame on the advocate, without explaining the conduct of the appellant and what steps and action was taken during more than four years. No correspondence between the appellant and their advocate has been placed on record. It is not even urged that attempt was made to verify and know about the status of the case, during the period from 2002 to 2006. In view of the above, we are of the opinion that no case of sufficient cause is made out by the appellant and, therefore, the learned Single Judge was justified in rejecting the application filed by the appellant under Order IX Rule 13 of the CPC. We find no merit in the appeal and the same is dismissed.