

(2015) 06 UK CK 0014
In the Uttarakhand High Court
Case No : A.O. No. 571 of 2014

Power Grid Corporation of India

APPELLANT

Vs

Deepak Mohan Bhatt and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151
Electricity (Supply) Act, 1948 — Section 42
Electricity Act, 1910 — Section 51
Limitation Act, 1963 — Section 5
Telegraph Act, 1885 — Section 16

Citation : (2015) 06 UK CK 0014

Hon'ble Judges : Umesh Chandra Dhyani, J.

Bench : Single Bench

Advocate : A.S. Rawat, Senior Advocate assisted by Kartikey Hari Gupta, Advocate, for the Appellant; Virendra Kaparwan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Umesh Chandra Dhyani, J.—Present A.O. has been preferred by the appellant being aggrieved against the orders dated 01.11.2014 and 16.04.2013, passed by learned I Addl. District Judge, Rishikesh in Misc. Suit No. 104 of 2001, titled as Deepak Mohan Bhatt and another v. Power Grid Corporation of India. Respondents herein filed a Misc. Suit No. 104 of 2001 against defendant-Power Grid Corporation under Section 16 of Indian Telegraph Act read with Section 42 of Electricity Supply Act, 1948 and Section 51 of the Indian Electricity Act, 1910. The said suit was decreed ex parte, vide judgment and decree dated 16.04.2013, passed by learned 1st Addl. District Judge, Rishikesh. The defendant corporation was directed to pay a sum of Rs. 8,64,900/- alongwith interest pendente lite and future at the rate of six percent per annum. The said suit was decreed ex parte against the defendant corporation, in as much as nobody turned up for the defendant when the hearing of the suit took place. Thereafter, defendant corporation (appellant herein) moved an application under Order IX Rule 13

C.P.C. read with Section 151 C.P.C. alongwith application under Section 5 of the Limitation Act. Although, application under Section 5 of the Limitation Act was allowed by the court below, application under Order IX Rule 13 C.P.C. for setting aside ex parte decree was dismissed, vide judgment and order dated 01.11.2014. Aggrieved against the same, present appeal has been preferred by the appellant Power Grid Corporation of India.

2. Learned counsel for the appellant drew attention of this Court towards affidavit filed in support of A.O. The main paragraphs of which are as follows:

"That the appellant/defendants duly filed the written statement to the claim petition 104 of 2001 which was never considered by the learned court below while passing the ex parte judgment and order dated 16.04.2013.

That the claimant/respondents filed a writ petition No. 1059 of 2003 in the Hon'ble High Court of Uttarakhand for the purpose of allowing them to do certain amendments in the claim petition. The said writ petition was allowed vide order dated 23.12.2011 and the claimant was allowed to do amendment in the plaint.

That in the abovementioned matter dated 04.12.2012 was fixed" for additional written statement from the appellants/defendants.

That in the abovementioned claim petition process was done by the Rishikesh office of appellant/defendants. On 20.06.2012, Rishikesh office of appellant/defendant was closed and all the officers and staff were transferred from there.

That because of the closure of Rishikesh office, doing Parokari in the matter, for the additional written statement, no summon/notice was ever received by appellant/defendants after the claim petition was taken up for hearing/filing of additional written statement.

That on 16.04.2013 the learned court below passed an ex parte final judgment and order accepting the claim of the claimant as it is and merely on the basis of personal affidavit of the claimants.

That for the first time appellant/defendant came to know about the ex parte order dated 16.04.2013 when they received summons for dated 09.05.2014 in execution/RM No. 24 of 2014 Deepak Mohan Bhatt v. Power Grid Corporation and then appellant through Advocate inspected the file and sought time to file objection.

That on 07.07.2014 appellant filed applications under Order 9 Rule 13 as well as under Section 151 of C.P.C. alongwith Section 5 application under the Limitation Act.

That vide order dated 01.11.2014 learned court below dismissed the Order 9 Rule 13 application of the appellant."

3. The appellant, therefore, prayed that in the light of abovementioned facts and circumstances of the case, present appeal may be allowed and the orders dated

01.11.2014 and 16.04.2013, passed by learned I Addl. District Judge, Rishikesh in Misc. Suit No. 104 of 2001, Deepak Mohan Bhatt and another v. Power Grid Corporation of India, may be set aside.

4. Order IX Rule 13 of the Code of Civil Procedure, 1908 reads as under:

"Setting aside decree ex parte against defendants. -In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfied the Court that the summon was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

...."

5. Although the notice was received by the Roorkee office of Power Grid Corporation of India, in which it was mentioned that the Power Grid Corporation can file written statement on 26.11.2012, but since none appeared for the Power Grid Corporation on 04.12.2012, therefore, the suit was directed to proceed ex parte against the defendant corporation (appellant herein) and finally suit was decreed ex parte, vide order dated 16.04.2013. In the affidavit filed in support of A.O., the defendant (appellant herein) has been able to satisfy the Court that the defendant corporation was prevented by sufficient cause from appearing when the suit was called on for hearing, therefore, This Court thinks that the order impugned as well as the ex parte decree passed in favour of the plaintiffs-respondents should be set aside in the interest of justice, in as much as there are catena of decisions of Hon''ble Supreme Court to hold that mere technicality should not come in the way of deciding the cases on merits.

6. Meaning of the word "sufficient Cause" has been explained by Hon''ble Apex Court in the case of Parimal Vs. Veena @ Bharti, . Relevant paragraph of said judgment reads as under:

"Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously:...."

It was also observed by Hon"ble Supreme Court in aforesaid judgment that -

"...In order to determine the application under Order IX Rule 13 CPC, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application...."

7. The approach of the Courts should, therefore, be liberal and elastic, rather than narrow and pedantic.

8. The plaintiff-respondents shall, however, be permitted to withdraw 25% of the amount, which has been deposited by the appellant corporation before the court below. In other words, the appeal is allowed. Impugned orders dated 01.11.2014 and 16.04.2013 are hereby set aside and at the same time, plaintiff-respondents are permitted to withdraw 25% of the amount, which has been deposited by the appellant corporation before the court below.

[Money withdrawal application No. 2471 of 2015 also stands disposed of].