(2003) 07 DEL CK 0067

In the Delhi High Court

Case No : IAs 11640 and 11641/01 in S. No. 1691/94

Punjab National Bank APPELLANT

Vs

Sh. Harish Sharma and Others RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4, Order 9 Rule 9, 151
Limitation Act, 1963 — Section 5

Citation : (2004) 1 AD 106 : AIR 2003 Delhi 458 : (2004) 3 BC 260 : (2004) 121 CompCas 142 : (2003) 107 DLT 244 : (2003) 71 DRJ 150 : (2003) 2 ILR Delhi 30

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : S.K. Pruthi, for the Appellant; R.K. Talwar, for the Respondent

Final Decision : Allowed

Judgement

H.R. Malhotra, J.

1 These are two applications made by the plaintiff one under Ordered r 9 Rules 4 and 9 read with Section 151 CPC and another u/s 5 of the Limitation Act.

2 This is a suit filed by the plaintiff bank for recovery of sum of Rs. 8,63,739.20 which was filed way back in the year 1994 but was dismissed in default on 23.7.1998 when it was at the stage of framing of issues. Since neither any representative of the plaintiff nor the counsel for the plaintiff appeared on that date Therefore it resulted in dismissal for default.

3. It is averred in the application that this suit was filed through Ms. Vrinda Dhar, one of the Panel Advocates of the plaintiff bank. She had to go out of country in June,1997 and had entrusted the matter to Mr. N.M. Popli, Advocate, who probably was her associate. Mr. Popli had appeared twice in the matter on 15th July,1997 and 12th December,1997 and sought adjournment on the ground that counsel for the plaintiff was away from India. However, he did not appear on

13th July,1998, the adjourned date, as such the Court had Ordered red issuance of notice to the plaintiff bank Vikaspuri Branch and also Ordered red for issuance of letter of request to Mr. A.S. Chandhiok, Advocate, requesting him to appear in the matter on 23rd July,1998. Mr. Chandhiok, as stated in the application, did not appear he being not the Standing Counsel for the plaintiff bank. As regards non-appearance of the representative of the plaintiff bank on that date it is stated in the application that this case in fact related to Connaught Circus Branch and not to Vikas Puri Branch and since the Court notice was issued to Vikas Puri Branch, Therefore, Connaught Circus Branch was not aware of issuance of such Court Notice. It is further stated in the application that the plaintiff bank came to know about the dismissal of the suit in the third week of August,1998 when Mr. N.M. Popli apprised the plaintiff bank about such dismissal. Having learnt about the fate of the case, the plaintiff bank immediately engaged Mr. K.K. Sharma, Advocate, to take necessary steps for restoration of the case. Mr. Sharma inspected the judicial file on 29th August,1998. However, the present application was made on 2nd December,2001.

4. Applicant/plaintiff has given justification for delayed filing in para 8 of the application. It is stated therein that originally the loan was applied with the New Bank of India which bank subsequently amalgamated with the Punjab National Bank i.e. the plaintiff bank and Therefore there have been complete reorganization of the structure of various branches which also merged together with the plaintiff bank and since the present case related to Desh Bandhu Gupta Road Branch and that Branch was also abolished in the year 1998 and the cases of that Branch were transferred to Branch Office at Janpath for further prosecution and in such reorganization of the structure of various Branches, the file of this case was misplaced in transit, while transferring all such files to Janpath Branch and for all these reasons, the present application could not be moved till Decembr,2001 when this file was finally traced on 2nd December,2001 and thereafter another counsel Mr. S.K. Pruthi, Advocate, was advised to file an appropriate application in this matter.

5. Restoration of the suit is thus prayed, there being sufficient reasons existing for non-appearance of the plaintiff and their counsel. What else is prayed is for condensation of delay in making the instant application.

6. Both these applications have been opposed by filing replies to these applications. The defendants have sought dismissal of application made under Ordered 9 Rule 4 CPC primarily on the ground that it has been made much beyond prescribed period of limitation.

7. As regards reasons assigned by the plaintiff/applicant in not making the application within the time, the defendants have pleaded that these reasons do not constitute sufficient reasons and have been made up with a view to cover up the delay. It is further pleaded in the reply that this case has a history of defaults as earlier too this case met dismissal on 26th September,1995 but was restored on 21st November,1995.

8. I have perused both the applications of the plaintiff and also the replies filed thereto. I have also looked into all the Ordered r sheets right from the year 1994 to the period when the suit was dismissed in default.

9. From the reading of these Ordered r sheets, it cannot be said that the plaintiff has not been diligently prosecuting its case. It is seen that the counsel for the plaintiff had been appearing regularly in this matter. She however had gone abroad and Therefore could not appear on 13th July,1998 and 23rd July,1998. Again no fault can be attributed to her as she had entrusted this matter to her associate Mr. Popli who had appeared on two dates i.e. on 15th July,1997 and 12th December,1997. He had sought adjournment on the ground that the counsel for the plaintiff had gone out of the country. He, however, did not appear on subsequent two dates and thus the plaintiff suffered dismissal of the suit in default. It is also manifest from the record that the plaintiff bank having come to know about the dismissal of the suit, took prompt action by engaging Mr. K.K. Sharma as Advocate who had taken inspection of the file on 29th August,1998.

10. Delay in filing the application occurred thereafter, reasons for which have been shown in para 8 of the application. As is evident New Bank of India, from whom the defendant allegedly took loan was amalgamated with the Punjab National Bank i.e. the plaintiff bank, and there had been complete reorganization of the structure of various branches and finally had to be transferred because of such structural reorganization and in that process the instant file lost its track. Such averments being supported by an affidavit of the Senior Manager of the plaintiff bank, have to be taken as correct. Even otherwise it is the common experience that because of such like structural reorganization more particularly public institution or the government institution, such like difficulties do arise for multifarious reasons, the advantage of which should not go to the opposite party, system being not fool proof and for that such institutions cannot be solely blamed. Reasons so assigned for not making the application do constitute sufficient reasons preventing the plaintiff from making the application within the prescribed period of limitation. It cannot be said that the plaintiff slept over the matter after having learnt about the dismissal of the suit. As is evident, they immediately engaged Mr. K.K. Sharma, Advocate, who inspected the judicial record in August,1998 and Therefore it cannot be said that the plaintiff bank was completely negligent in not prosecuting its matter earnestly.

11. True, some fault is attributed to them as they took sufficiently long time for making the present application but then they have been able to explain the delay which Explanation is duly supported by an affidavit of the responsible officer of the plaintiff bank. I am, Therefore, of the view that the plaintiff was prevented by sufficient reasons in appearing in the matter because the counsel to whom the case was entrusted by the counsel for the plaintiff, stopped appearing after two hearings. This being so, application made by the plaintiff under Ordered r 9 Rule 4 and 9 CPC is required to be allowed. Similarly application u/s 5 of the Limitation Act should also be allowed as justifiable reasons have been assigned

by the plaintiff for making the application beyond the period of limitation. However, this Court should not lose sight of the fact that the proceedings of the suit have been delayed considerably of course due to the fault of the plaintiff and for that the plaintiff must be burdened with heavy costs. While allowing both these applications the plaintiff is burdened with Rs. 20,000/- as costs. Ordered red accordingly.

