
(2011) 07 AHC CK 0258
In the Allahabad High Court
Case No : C.M.W.P. No. 32196 of 2011

Reliance General Insurance Company Ltd.	APPELLANT
Vs	
Smt. Geeta and others	RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

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

Citation : (2011) 10 ADJ 531 : (2011) 4 CivCC 717 : (2011) 114 RD 316

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri S.K. Mehrotra for the petitioner and Sri Jai Prakash Prasad for contesting respondents 1 to 3.

2. Having heard Learned Counsel for parties, I proceed to decide the matter at this stage under the Rules of Court.

3. It appears that respondents 1 to 3 filed a Motor Accident Claim Petition No. 55 of 2009. Petitioner failed to appear before the Tribunal on 6.9.2010 whereupon it directed to proceed ex parte against petitioner. Thereafter, the evidence of plaintiff started and one of the witness statement was recorded on 29.3.2011. Petitioner, at this stage, appeared before the Tribunal and moved an application requesting to recall ex parte order and accept written statement. Learned District Judge, Ghazia-bad by means of impugned order dated 13.4.2011 rejected the said application of the petitioner on the ground that the application is not maintainable in view of law laid down by this Court in Kailash Nath and others v. Rajeev Ratan, 2004 (56) ALR 499 . and Apex Court in Arjun Singh Vs. Mohindra Kumar and Others,

4. Having gone through the decision of this Court in Kailash Nath (supra), it is evident that District Judge has misdirected himself and misread the aforesaid judgment. Instead of saying that application under Order IX Rule 7 was not

maintainable, the Court, on the contrary, had said that such an application was maintainable at any stage unless the date fixed for delivery of judgment or when the judgment has been delivered. Though in that case, the stage has come when only the judgment was to be delivered and yet Court upheld maintainability of an application under order IX Rule 7 for recalling the ex parte order. Para 10, 11 and 12 of the said judgment may be reproduced as under:

10. From the aforesaid, it is clear that on the date fixed, if the defendant does not appear, the Court may proceed in his absence, but it does not stop the defendant from not appearing subsequently. If the defendant appears subsequently after passing of the ex parte order and shows sufficient cause for his previous non-appearance, the Court can hear the defendant and permit him to appear.

11. In the present case, the Court passed an order to proceed ex parte against the defendant, but before the judgment could be delivered, the defendant appeared and moved an application, which was maintainable and was rightly allowed by the Court below.

12. The contention of the Learned Counsel for plaintiff that the application was not maintainable and the application could only be moved under Order IX, Rule 13, CPC after the decree was passed is incorrect. In the event, the Court after proceeding ex parte against the defendant had delivered the judgment or fixed a date for delivery of judgment, in that case, and in that eventuality, the provisions of Order 9 Rule 13 CPC would come into play and the provisions of Order IX, Rule 7 C.P.C. would not be attracted. The decision cited by the Learned Counsel in Arjun Singh Vs. Mohindra Kumar and Others, is not attracted to the present facts. In Arjun Singh case, the Court proceeded ex parte against the defendant and fixed a date for delivery of judgment. Subsequently, the defendant moved an application for recall of the ex parte order. The Supreme Court held that the provisions of Order IX Rule 7, CPC was not attracted to a date fixed for delivery of judgment and it was not a case of adjourned hearing. In the present case no date was fixed for delivery of judgment. In fact after passing of the ex parte order and before delivery of judgment, the defendant appeared on the same date and moved an application. Such application was clearly maintainable even under Order IX, Rule 7 CPC.

5. The decision in Arjun Singh (supra) has also been wrongly referred and this Court is surprised to see how the District Judge, Ghaziabad, being a Higher Judicial Officer, has so misread the judgment. I am constrained to observe that the judgment in question raises a question upon the competence and understanding of such a high Judicial Officer.

6. Be that as it may, the order impugned in this writ petition apparently cannot sustain. Learned Counsel appearing for respondents No. 1 and 2 also fairly stated that the order impugned in this writ petition cannot be defended but requested that since his claim is pending for the last two years, the Tribunal may be

directed to decide the same expeditiously.

7. In view of above discussion, writ petition is allowed. Impugned order dated 13.4.2011 (Annexure 4 to writ petition) is hereby quashed.

8. Tribunal is directed to consider petitioner's application under Order IX, Rule 7 CPC and pass appropriate order in accordance with law expeditiously.

9. Registry is directed to place a copy of this order before Hon''ble Administrative Judge, Ghaziabad for His Lordship's kind perusal.