

(2023) 05 DEL CK 0105

In the Delhi High Court

Case No : First Appeal From Order No. 273 Of 2019, Civil Miscellaneous
Application No. 31154 Of 2019

Royal Sundaram General Insurance Company Limited

APPELLANT

Vs

Krishan Pal

RESPONDENT

Date of Decision : 16-05-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 104, 151, Order 43 Rule 1(d), Order 9 Rule 13
Limitation Act, 1963 — Section 5

Citation : (2023) 05 DEL CK 0105

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Deepa Chacko, Sandeep Kumar

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. By way of present appeal filed under Order 43 Rule 1(d) & Section 104 CPC read with Section 151 CPC, the appellant has assailed the order dated 23.03.2019 passed by the Trial Court, whereby its application filed under Order IX Rule 13 CPC was dismissed.

2. Learned counsel for the appellant contended that learned Trial Court failed to appreciate that the appellant was prevented by sufficient cause from appearing in the matter. In the underlying application, the appellant has explained that after being served with the summons in the suit, it duly appeared through counsel and even filed the written statement albeit, belatedly. The appellant's counsel after initial appearance stopped appearing without any intimation to the appellant. These facts came to the knowledge of the appellant on 03.07.2018, when it was served with the summons in the execution petition.

3. Per contra, learned counsel for the respondent submitted that the explanation

provided in the application is vague and insufficient. Further, the averments made in the application itself are incorrect inasmuch as the appellant was continued to be represented even after the aforesaid counsel had left the appellant-organization, and thus the ground taken in the application is fallacious.

4. I have heard learned counsels for the parties and gone through the material placed on record.

5. Before proceeding further, reference in connection with the scope of present appeal is made to decision of this Court in H. P. Singh (Harvinder Pal Singh) v. Sh. Jasbir Singh & Ors., FAO 64/2022 rendered on 10.03.2023. The relevant excerpt reads as under:

"7. The short question which arises for consideration before this Court is whether the appellant has been able to make out a case of "sufficient cause" for non-appearance, as required in terms of Order 9 Rule 13 CPC.

8. Insofar as the scope of an application under Order 9 Rule 13 CPC is concerned, it is now well-settled that the Court has to see whether the summons in the suit were duly served or not and/or whether the defendant was prevented by any "sufficient cause" from appearing when the suit was called for hearing.

9. "Sufficient cause" is an elastic expression and no hard and fast guidelines are prescribed to define it. Although the Court has wide discretion in interpreting the words "sufficient cause", the same has to be exercised according to the particular facts and circumstances of the case.

10. At this stage, reference may profitably be made to Sudarshan Sareen v. National Small Industries Corporation Ltd. and Anr. reported as 2013 SCC OnLine Del 4412, where a Division Bench of this Court held the appellant therein to have been willfully negligent in not appearing and rejected his prayer for setting aside dismissal of his application under Order 9 Rule 13 CPC. The Court relied on a passage from Parimal v. Veena alias Bharti reported as (2011) 3 SCC 545, where the expression "sufficient cause" was interpreted as under:

"13. "Sufficient cause" is an expression which has been used in a large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch 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 the 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. (Vide Ramlal v.

Rewa Coalfields Ltd., Lonand Grampanchayat v. Ramgiri Gosavi, Surinder Singh Sibia v. Vijay Kumar Sood and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn.)

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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. (Vide *State of Bihar v. Kameshwar Prasad Singh, Madanlal v. Shyamlal, Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd., Ram Nath Sao v. Gobardhan Sao, Kaushalya Devi v. Prem Chand, Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd. and Reena Sadh v. Anjana Enterprises.*)

16. In order to determine the application under Order 9 Rule 13 CPC, the test that 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 defense. 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 straitjacket formula of universal application."

11. It would be apposite to also advert to *A. Murugesan v. Jamuna Rani* reported as (2019) 20 SCC 803. In the said case, the Supreme Court affirmed its earlier view taken in *G.P. Srivastava v. R.K. Raizada and Others* reported as (2000) 3 SCC 54, which is reproduced hereunder:

"7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. 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 the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a 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 were initiated against him, he

cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide 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.””

6. Coming back to the present case, a perusal of the material placed on record would show that before the Trial Court, the appellant had appeared through counsel on 22.12.2014. On the next date i.e.21.02.2015, the appellant's counsel sought time to file the written statement. On the next date i.e., 24.04.2015, the appellant was unrepresented. As the written statement was filed belatedly on 15.07.2015, the Court imposed a cost of Rs.2,000/- that remained unpaid. Noticing the continued absence of the appellant, a further cost of Rs.3,000/- was imposed on 08.09.2015. Even on the next two dates i.e., 12.10.2015 and 03.11.2015, neither appellant nor its counsel appeared. Eventually, on 06.01.2016, the appellant was proceeded ex-parte. Later, the Trial Court passed the ex-parte judgment on 21.07.2018.

7. Although the appellant along with the application filed under Order IX Rule 13 CPC also preferred an application under Section 5 of the Limitation Act. A perusal of the aforesaid application would show that except blaming its counsel, no other ground was stated. Notably, it was urged that the appellant's legal officer G. Vinay Prakash had left the organization on 19.06.2015 but the proceedings of the Trial Court would rather show that Mr. G. Vinay Prakash never appeared. In fact, the appellant's solitary defense in blaming its erstwhile counsel also has no legs to stand as though the counsel is stated to have left appellant-organization on 19.06.2015, the appellant continued to be represented through other counsels till it was proceeded ex-parte on 06.01.2016. On a specific query, learned counsel for the appellant submits that it has taken no action against its earlier counsel.

8. In the considered opinion of this Court, the appellant has failed to make out a case of 'sufficient cause' for its non-appearance since it was proceeded ex-parte. The explanation provided is vague and rather fallacious. Accordingly, the impugned order is upheld and the appeal is dismissed alongwith the pending application.