

(2006) 11 DEL CK 0108

In the Delhi High Court

Case No : IA No. 11742 of 2003 in CS (OS) No. 130 of 1995

Sandeep Industries

APPELLANT

Vs

The Collector of Customs and Others

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 17 Rule 3, Order 19 Rule 1, Order 8 Rule 10, Order 9 Rule 13
Limitation Act, 1963 — Section 5

Citation : (2007) 1 BC 234 : (2007) 1 CivCC 747 : (2009) 93 DRJ 58 : (2007) 145 PLR 20 : (2007) 5 RCR(Civil) 194

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Sharad K. Agrawal, Sangeeta Grover and Atul Gupta, for the Appellant; Satish Aggarwal, for the Respondent

Judgement

Reva Khetrapal, J.—By this judgment, I shall dispose of the application under Order IX Rule 13 read with Section 151 CPC praying for

setting aside the ex parte judgment and decree dated 22nd August, 2003.

2. The facts in a nutshell are that a suit for the recovery of Rs. 22,64,564/- together with interest at the rate of 18% per annum pendente lite till

realisation and costs was instituted by the plaintiff, M/s. Sandeep Industries on 12th January, 1995. Notice of the institution of the suit was duly

served on the defendants No. 1 & 3 for 14th July, 1995, on which date counsel for defendants No. 1 & 3 sought time for filing written statement.

Defendants No. 1 & 3 assert in the present application that they filed their written statement through the Central Government Standing Counsel,

Shri P.S. Sharma ""expeditiously"". The record belies this: Written Statement has not been filed till date, much less ""expeditiously

3. As per the record, on 14th July, 1995 four weeks" time was granted to the defendants No. 1 & 3 to file written statement and the case was

renotified for 16th October, 1995. On the said date, that is on 16.10.1995, though counsel for defendants No. 1 & 3 appeared, written statement

was not filed and was ordered to be filed by this Court within a week"s time by supplying advance copy to counsel for the plaintiff. The case was

thereafter adjourned to 26th April, 1996. On the said date, that is on 26th April, 1996, the case was listed before the Joint Registrar, who

recorded that written statement had not been filed by the defendants No. 1 & 3. Since none appeared on behalf of the defendants No. 1 & 3, no

further time was granted to the defendants No. 1 & 3 for filing written statement and the case was renotified for 30th September, 1996. None

appeared for the defendants No. 1 & 3 on 30th September, 1996 and even on subsequent dates, that is, 12th February, 1997; 25th July, 1997;

15th September, 1997; 17th November, 1997; 28th November, 1997; 2nd April, 1998; 22nd May, 1998; 20th November, 1998; 24th March,

1999; 1st September, 1999 and 8th October, 1999. On the said date, that is 8th October, 1999, the names of defendants No. 2 & 4 at the

behest of the said defendants were deleted from the array of defendants and the court ordered as follows:

... By way of extraordinary precaution the learned Counsel for the plaintiff may inform the counsel for defendant No. 1 and 3 about the orders

which are being passed today by circulating a letter.

4. Presumably on receipt of such information, counsel for the defendants No. 1 & 3 appeared on 29th February, 2000, but thereafter again chose

not to appear on 24th April, 2000; 28th August, 2000 and 18th October, 2000. On 18th October, 2000, the following order was passed:

Counsel for the plaintiff submits that defendants 1 and 4 were deleted from the array of parties vide order dated 8-10-1999. None is present on

behalf of defendants 1 and 3. Learned Counsel for the plaintiff submits that written statement was filed by defendants 1 and 3 but the same is not

on record. Replication to the same is on record. None appeared before the Joint Registrar on behalf of defendants 1 and 3 on the last date of

hearing, and none is present today. In the interests of justice let notice to the standing counsel for the Union of India be issued without process fee

returnable on 23rd November, 2000.

5. Pursuant to order dated 18th October, 2000, the defendants were served with court notice through Shri H.S. Phoolka, Standing Counsel for

the Union of India on 21st November, 2000 for 23rd November, 2000. Accordingly on 23rd November, 2000, defendants No. 1 & 3 were

represented through counsel, Mr. Virender Rawal, Advocate who stated before the Court that after receiving notice, he was appearing for the first

time. He accordingly sought time to inspect the file which was granted to him and thereafter, the case was listed for directions on 12th January,

2001. On the said date, that is 12th January, 2001, again none appeared for the defendants No. 1 & 3 and the case was adjourned to 8th August,

2001 to be listed before the Joint Registrar. The Joint Registrar after recording that though replication was on the record, written statement filed by

the defendants No. 1 & 3 was not on the record, and that none had appeared on behalf of defendants No. 1 & 3, directed that the matter be

placed before the Court on 1st October, 2001. On 1st October, 2001, the case was ordered to be listed for framing of issues on 11th December,

2001. Although it is not so stated in the order sheet, presumably the Court directed the plaintiff to again inform the defendants No. 1 & 3 about the

date fixed for settlement of issues. plaintiff accordingly sent letter dated 1st October, 2001 through Speed Post to the defendants No. 1 & 3,

namely, Director of Revenue Intelligence , Delhi Zone, Units B-3 & 4, Phase-II, 6th Floor, CGO Complex, Lodhi Road, New Delhi and Collector

of Customs, Central Excise, C.R. Building, I.P. Estate, New Delhi-110002. The said letter reads as follows:

BY SPEED POST

The Collector of Customs

Central Excise

C.R. Building, I.P. Estate

New Delhi-110002

Director of Revenue Intelligence

Delhi Zone

Units B-3 & 4, Phase-II

6th Floor, CGO Complex

Lodhi Road

New Delhi

Subject: Suit no: 130/1995 entitled Sandeep Industries Verses Collector of Customs and Anr. pending before Hon"ble High Court of Delhi

Dear Sir,

Under instructions from and on behalf of our clients M/s Sandeep Industries, A-121 Shardapuri situate at Ramesh Nagar, New Delhi-110015, we

herewith bring following facts in your kind notice:

1. That you are not appearing in the above captioned matter for the last many dates in the Hon"ble Court.

2. That on 1/10/2001, when the matter was listed before the Hon"ble Court, nobody was present from your end. Therefore, the Hon"ble Court

could not make the issues in the said matter and the matter was reluctantly adjourned to 11/12/2001.

3. That as such, please find enclosed herewith copy of proposed issues. Please be advised, if again you fail to appear, the Hon"ble court shall

proceed with the matter as deemed necessary and proper.

4. That the amended memo of parties is also enclosed herewith.

Kindly acknowledge the receipt of this notice to this office within seven days from the date of receiving it in your office.

Thanking you

Yours faithfully,

For KUMAR CONSULTANCY CIRCLE,

(SHARAD K. AGRAWAL)

Advocate, Delhi High Court

Encl: As above

6. The defendants No. 1 & 3, despite service of the aforesaid letter, did not care to appear on the said date, that is, on 11th December, 2001.

Accordingly, defendants No. 1 & 3 were proceeded ex parte and the plaintiff directed to adduce its evidence by way of affidavits. Thereafter, the

case was listed for evidence on 8th April, 2002 and thereafter for hearing on 8th May, 2002; 24th September, 2002; 13th December, 2002; 27th

February, 2003 and 11th August, 2003. On all the aforesaid dates, none

appeared on behalf of the defendants. On 11th August, 2003, finally, arguments were heard and orders reserved. On 22nd August, 2003, an ex parte judgment and decree was passed by the Court in favor of the plaintiff and against the defendant No. 3. In the said judgment, though it was recorded that written statement had been filed by the defendants No. 1 & 3, the same is not on record. Presumably, the said observation was made by the Court in view of the fact that replication of the defendants No. 1 & 3 was on record.

7. It is in the aforesaid backdrop that the present application under Order IX Rule 13 of the CPC has been filed by the defendants, the provisions whereof provide for an application for setting aside of a decree passed ex parte against a defendant if he satisfies the Court (a) that the summons were not duly served; or (b) that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. The second proviso to Rule 13 is also significant. It stipulates that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim. Though this proviso is not relevant for the purposes of the present application, since it is an adjunct to the first part of the Rule, viz. that summons were not duly served, reference is being made to the same for the purpose of showing the intent of the legislators, namely, that if a defendant has sufficient notice of a date of hearing and has sufficient time to appear and answer the plaintiff's claim, he cannot plead that summons were not duly served upon him. This, in my view, assumes significance in view of the fact that discretionary jurisdiction has been conferred upon the Court passing the ex parte decree for setting aside the same, taking into consideration the cause for non-appearance of the defendant on the date when the decree was passed and all other attendant facts and circumstances.

8. In the course of hearing, learned Counsel for the applicants Mr. Satish Aggarwal, Senior Advocate drew my attention to paragraph 3 of the application for the purpose of substantiating his contention that there was ""sufficient cause"" which prevented the defendant from appearance. The said paragraph being relevant is reproduced hereunder:

3. That being aggrieved by the order of proceeding ex-parte and ex-parte judgment and decree dated 22.8.2003, the defendants are approaching

this Hon''ble Court for setting aside the same, on the following amongst other grounds:

A. Because in the civil proceedings, the personal appearance of the parties is not necessary and he can be represented through his counsel. In the

present case also, the defendants have duly authorized their counsel to appear on their behalf, who after filing of the written statement does not

appeared to have appear before this Hon''ble Court (sic.), which resulted in the passing of judgment ex-parte.

B. Because the defendant came to know about the ex-parte decree only when they received a notice from this Hon''ble Court, whereby it came to

know that the plaintiff has filed an Execute proceedings No. 313/2003, before this Hon''ble Court.

C. Because the defendants have taken all due diligence and have filed the written statement expeditiously, as advised by the counsel appearing for

the defendants.

D. Because it is well settled law that a party should not suffer because of the lapse on the part of the counsel. In any event, the defendants regret

for the lapse, if any, on their part and/or on the part of the counsel and undertake to be more careful in future.

9. Learned Counsel for the plaintiff Mr. Sharad K. Agrawal, on the other hand, contended that the application filed by the defendants was not

maintainable in view of the following facts:

(i) The provisions of Order IX Rule 13 CPC are not attracted and do not come into the picture in the circumstances of the instant case as the

defendants chose not to appear and in such circumstances, it is not an ex parte decree and the Courts are at liberty to proceed under Order XVII

Rule 3 Code of Civil Procedure.

(ii) In the present case, the defendants have filed an application under Order IX Rule 13 for setting aside an ex parte order which was made on

11th December, 2001 and against the ex parte decree passed on 22nd August, 2003 without any application for condensation of delay u/s 5 of the

Limitation Act. It cannot be disputed that the defendants are liable to show sufficient cause for condensation of delay from the date of order

proceeding ex parte against them on 11th December, 2001. Hence, in the absence of such an application u/s 5 of the Limitation Act, the present

application is liable to be rejected.

(iii) The defendants were duly served with the summons of the suit as is borne out by the fact that counsel for defendants appeared and sought time

for filing written statement.

(iv) Written statement has not been filed till date by the defendants and hence the contention of the defendants that the defendants have taken all

due diligence and have filed the written statement expeditiously is patently false.

(v) The contention of the defendants that a party should not suffer because of the lapse on the part of the counsel cannot be countenanced in view

of the fact that notwithstanding the due service of summons upon the defendants, the Court time and again ordered fresh service on the Standing

Counsel as well as on the defendants themselves. It is borne out by the record that Court notice was served on the Standing Counsel as well as on

the defendant No. 1, the Collector of Customs and the defendant No. 3, the Director of Revenue Intelligence through speed post. Despite this, the

defendants chose not to appear.

(vi) It is impossible to imagine that the defendants, who were served and entered appearance on 14th July, 1995, did not care to find out the

outcome of the suit till the service of the decree upon them on 9th December, 2003, that is, for a period of over eight years.

(vii) Even after proceeding ex parte against the defendants on 11th December, 2001, this Court adjourned the matter for 8th April, 2002 and

thereafter to 8th May, 2002; 24th September, 2002; 13th December, 2002; 27th February, 2003 and 11th August, 2003 on which date orders

were reserved. Hence, by no stretch of imagination it can be said that the defendants did not have reasonable time to appear before the Court.

10. I propose first to deal with the submission of the counsel for the plaintiff that in the instant case the present application under Order IX Rule 13

CPC is not maintainable as the decree dated 22nd August, 2003 cannot be said to be an ex parte decree and that the defendants not having

appeared, the Court was at liberty notwithstanding their absence to proceed with the case under Rule 3 of Order XVII of the Code of Civil

Procedure.

11. In *Prakash Chander Manchanda and Another Vs. Janki Manchanda*, the Apex Court minutely examined the scope and ambit of the aforesaid

provisions and after noticing that two views existed prior to the amendment of the CPC in 1976, the Hon''ble Supreme Court held that if on a date

fixed by the Court one of the parties remains absent and for that party no evidence has been examined up to that date, the Court has no option but

to proceed to dispose of the matter in accordance with Order XVII Rule 2, in any one of the modes prescribed under Order IX Civil P.C. The

relevant portion of the judgment of the Hon''ble Supreme Court in *Manchanda's* case (*supra*) is extracted below:

6. In some decisions, the High Courts have gone to the extent of saying that even if the trial court disposes of the matter as if it was disposing it on

merits under Order 17 Rule 3 still if the party against whom the decision was pronounced was absent it could not be treated to be a disposal in

accordance with Order 17 Rule 3 and provisions of Order 9 will be available to such a party either for restoration or for setting aside an *ex parte*

decree. Learned Counsel placed before us a number of decisions of various High Courts on this aspect of the matter. But in our opinion in view of

the amendment to these two rules which have been made by 1976 amendment of the CPC it is not disputed that to the facts of this case, CPC as

amended will be applicable and Therefore it is not necessary for us to go into that question. Order 17 Rule 2 and Rule 3 as they now stand reads:

Order 17, Rule 2. Procedure if parties fail to appear on day fixed.-Where, on any day to which the hearing of the suit is adjourned, the parties or

any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order 9 or make such other

order as it thinks fit.

Explanation.-Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on

any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.

Order 17 Rule 3. Court may proceed notwithstanding either party fails to produce evidence, etc.-Where any party to a suit to whom time has been

granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of

the suit, for which time has been allowed, the Court may, notwithstanding such default,-

(a) if the parties are present, proceed to decide the suit forthwith, or

(b) if the parties are, or any of them is, absent proceed under Rule 2.

It is clear that in cases where a party is absent the only course is as mentioned in Order 17 Rule 3(b) to proceed under Rule 2. It is Therefore clear

that in absence of the defendant, the court had no option but to proceed under Rule 2. Similarly the language of Rule 2 as it now stands also clearly

lays down that if any one of the parties fails to appear, the court has to proceed to dispose of the suit in one of the modes directed under Order 9.

The Explanation to Rule 2 gives a discretion to the court to proceed under Rule 3 even if a party is absent but that discretion is limited only in cases

where a party which is absent has led some evidence or has examined substantial part of their evidence. It is Therefore clear that if on a date fixed,

one of the parties remain absent and for that party no evidence has been examined up to that date the court has no option but to proceed to

dispose of the matter in accordance with Order 17 Rule 2 in any one of the modes prescribed under Order 9 of the Code of Civil Procedure. It is

Therefore clear that after this amendment in Order 17 Rules 2 and 3 of the CPC there remains no doubt and Therefore there is no possibility of

any controversy. In this view of the matter it is clear that when in the present case on October 30, 1985 when the case was called nobody was

present for the defendant. It is also clear that till that date the plaintiff's evidence has been recorded but no evidence for defendant was recorded.

The defendant was only to begin on this date or an earlier date when the case was adjourned. It is Therefore clear that up to the date i.e. October

30, 1985 when the trial court closed the case of defendant there was no evidence on record on behalf of the defendant. In this view of the matter

Therefore the Explanation to Order 17 Rule 2 was not applicable at all. Apparently when the defendant was absent Order 17 Rule 2 only

permitted the court to proceed to dispose of the matter in any one of the modes provided under Order 9.

7. It is also clear that Order 17 Rule 3 as it stands was not applicable to the facts of this case as admittedly on the date when the evidence of

defendant was closed nobody appeared for the defendant. In this view of the

matter it could not be disputed that the court when proceeded to dispose of the suit on merits had committed an error. Unfortunately even on the review application, the learned trial court went on in the controversy about Order 17 Rules 2 and 3 which existed before the amendment and rejected the review application and on appeal, the High Court also unfortunately dismissed the appeal in liming by one word.

8. The learned Counsel for the respondent attempted to contend that in this view of law as it now stands an application under Order 9 Rule 13 will be maintainable. However it was suggested that there was also an objection of limitation about the acceptance of that application. It is apparent that the learned trial court has not considered the application on merits but has only rejected it as not maintainable and that order has been maintained. This objection of the learned Counsel for the respondent is not necessary for us to go into at this stage as in view of the law discussed above, the order rejecting the application as not maintainable, has to be set aside and it will be open to the learned trial court to consider the application under Order 9 Rule 13 and dispose it of in accordance with that law and while so doing, it may even examine the objections that may be raised by the respondent.

12. In view of the aforesaid exposition of law by the Hon'ble Supreme Court, I am unable to uphold the contention of counsel of the plaintiff that post amendment of the Code of Civil Procedure, the provisions of Order XVII Rule 3 CPC are attracted to the instant case and hence the present application under Order IX Rule 13 CPC is not maintainable.

13. Having found the application to be maintainable, I proceed to consider the merits thereof in accordance with law. Before doing so, however, it is proposed to advert to the second submission of counsel for the plaintiff that since the present application is not supported by an application u/s 5 of the Limitation Act, the same is liable to be rejected in view of the fact that the defendants were proceeded ex parte on 11th December, 2001. In the above context, reliance was placed by learned Counsel for the plaintiff on a judgment of the Kerala High Court in Padmavathi Vs. Kalu, wherein it was held that where the petition for condensation of delay in filing the appeal has been filed subsequent to the filing of the appeal, the petition is liable to be dismissed. Reliance was also placed in this regard by

counsel for plaintiff on the following judgments:

- (i) Union of India and others Vs. Visveswaraya Iron and Steel Ltd.,
- (ii) Union of India v. Tata Yodogawa Limited 1988 (38) E.L.T. 739 (S.C.)
- (iii) The General Manager, Northern Railway Baroda House Vs. Mr. Vishva Nath Nangia,

14. Learned Counsel for the defendants, on the other hand, relied upon the following decisions to contend that there exists ""sufficient cause"" for

non-appearance of the defendants on the various date when the matter was listed before this Court:

- (i) Gujarat Co-operative Oil Seeds Growers Federation v. Smt. Ramesh Kanta Jain 2nd 1994 Delhi 367
- (ii) Sudha Devi Vs. M.P. Narayanan and Others,
- (iii) Sushila Narahari and Ors. v. Nandakumar and Anr. 1996 (5) Sca 494

15. Having carefully gone through the aforesaid decisions, I am unable to persuade myself that the same in any manner further the case of the

defendants. In Gujarat Co-operative Oil Seeds Growers Federation (supra), a Division Bench of the Delhi High Court held that an application

under Order IX Rule 13 for setting aside an ex parte decree disposing of the suit under Order VIII Rule 10 of the CPC was maintainable. This

decision quite obviously has no relevance to the present case.

16. In Smt. Sudha Devi (supra), the Hon"ble Supreme Court held that even in the absence of a defense, the Court cannot pass an ex parte decree

without reliable relevant evidence. It may be noted that in the said affidavits in evidence had been filed by the plaintiff prior the amendment of the

CPC and the same were held by the Apex Court to be of no evidentiary value. After the amendment of the Code, Order XIX Rule 1 empowers

the Court to order that any particular fact or facts may be proved by affidavit subject to the right of the defendant to cross-examine the deponent

provided for in Rule 2 and subject to the provisions of Rule 3 that the affidavit shall be confined to such facts as the deponent is able to of his own

knowledge to prove. In any event, it is not the case of the defendants that the decree has been passed without reliable relevant evidence.

17. In Sushila Narahari (supra), a suit for specific performance was decreed ex parte whereupon an application for setting aside the ex parte

decree was filed. The same was delayed by 40 days. The trial court refused to condone the delay as also the High Court in revision. Allowing the appeal, the Apex Court held that the delay was liable to be condoned in view of the fact that the counsel for the appellant had withdrawn his vakalatnama when the suit came up for trial without notice to his client and had thereby deselected his duty of informing the client by registered post if there was non-cooperation. This judgment, needless to state, has no application to the facts of the present case where the defendants have not cared to file an application for condensation of delay till date.

18. In view of the foregoing, the only aspect of the matter which remains to be dealt with is whether there exists sufficient cause for setting aside of the ex parte decree passed by this Court on 22nd August, 2003 in the facts and circumstances of the instant case. Recapitulating the same, at the risk of repetition, it is reiterated that it is not in dispute that the defendants No. 1 & 3 were duly served on 14th July, 1995 and granted four weeks' time for filing written statement on the aforesaid date, which was enlarged by the Court on the following date, that is, on 16th October, 1995 by one week, with a direction to furnish advance copy of the written statement to counsel for plaintiff. Apparently, advance copy was furnished to counsel for plaintiff who filed replication (not once but twice) to the written statement, but the written statement itself was not filed as was repeatedly noted in subsequent orders. On 8th October, 1999 by way of abundant precaution, a direction was given by the Court that "by way of extraordinary precaution the learned Counsel for the plaintiff may inform the counsel for defendant No. 1 and 3 about the orders which are being passed today by circulating a letter." The letter appears to have been circulated as is evident from the fact that on 29th February, 2000, counsel for defendants appeared and sought time from the Court. Thereafter, the defendants again defaulted in appearance and again the Court by order dated 18th October, 2000 ordered that in the interest of justice, notice be issued to the Standing Counsel for the Union of India without process fee returnable on 23rd November, 2000. The service of the said notice was duly effected as is borne out from the record on 21st November, 2000. Pursuant to the service of the notice, counsel for the defendants appeared on 23rd November, 2000 and sought time to inspect

the file, which was granted to them by adjourning the case to 12th January, 2001. On the said date, that is on 12th January, 2001 and on the subsequent dates, that is 8th August, 2001 and 1st October, 2001, the defendants again defaulted in appearance. On 1st October, 2001 the case was adjourned to 11th December, 2001 by the Court. This date was duly intimated to defendant No. 1 as well as to the defendant No. 3 by counsel for the plaintiff addressing a letter to the defendant No. 1 himself, viz., the Collector of Customs as well as to the defendant No. 3 himself, viz., the Director of Revenue Intelligence and dispatching the same through Speed Post. It was specifically set out in the said letter that on 1st October, 2001 when the matter was listed before the Court, none had appeared for the defendants and, Therefore, the Court reluctantly adjourned the matter to 11th December, 2001. The defendants were also expressly noticed as follows:

Please be advised, if again you failed to appear, the Hon''ble court shall proceed with the matter as deemed necessary and proper.

Despite this, the defendants chose to absent themselves from the proceedings, leaving the Court with no option except to proceed ex parte against them on 11th December, 2001. Even thereafter, none appeared for the defendants on 8th April, 2002 when the plaintiff's documents were exhibited and on 8th May, 2002; 24th September, 2002; 13th December, 2002; 27th February, 2003 and 11th August, 2003 when the matter was heard by the Court. In such circumstance, to my mind, by no stretch of imagination can it be said that ""sufficient cause"" has been shown by the defendants for their non-appearance in the suit proceedings. The defendants were served time and again by the plaintiff, personally as well as through Counsel/Standing Counsel. The plaintiff as well as the Court did its utmost to secure the presence of the defendants, but the defendants chose to remain oblivious of the Court proceedings.

19. Time has come to express anguish at the manner in which Court proceedings are being viewed by litigants, where indulgence shown by the Court is mistaken by the litigant to be either a vested right afforded to him by the law, or worse still the laxity of the Court, leading to a casual and cavalier approach to Court cases. Such approach of the litigant if not dealt with firmly may in time lead to the breakdown of the judicial system

itself. Merely because indulgence is extended by the Court toward the party, as was extended time and again in this case, the party cannot be presumptuous enough to assume that it has attained a vested right for being served afresh for each and every date of hearing. A party in order to seek relief from the Court must satisfy the Court that it defaulted in appearance because of circumstances beyond its control or, at any rate, on account of overwhelming difficulties. Sleeping over the matter by the party should not be countenanced lightly. Likewise, cryptic and off the cuff Explanations for non-attendance deserve outright rejection. Government Departments, who take the Courts for granted, should not be lightly let off for their dereliction of duties. A drastic alteration in the mind set of individuals seeking the assistance of the Court as also corporate bodies and Government agencies unless brought about is bound to lead to utter chaos in the judicial functioning. Due diligence must take the place of negligence which pervades throughout, if Courts are to deliver to the litigant his rights. Justice should not be allowed to be sacrificed at the alter of dereliction, default, negligence, indifference and the like.

20. In the instant case, despite being served again and again, the concerned Government Departments instead of proffering any cogent Explanation for their non-appearance have shrugged off their responsibility by seeking to lay the blame at the door of the counsel. Panel of Government counsel, it is well known, is changed from time to time by the concerned departments and merely by entrusting the file to a counsel, the Government Department cannot be heard to say that it is no longer the responsibility of the Department to keep track of the case. In the present case, not a scrap has been placed on record by the Department to show that it ever inquired the outcome of the case from any of its counsel. Ex parte decree was passed after a lapse of eight years. The defendants were sleeping uninterruptedly throughout and have now arisen from their slumber to claim that the same should not be executed, without even so much as giving a semblance of an Explanation. While I am conscious of the fact that if possible the discretion conferred on this Court ought to be exercised in favor of the defendants by putting the defendants on terms, but I am unable to persuade myself to do so in the instant case in view of the gross negligence of the defendants, which is writ large on the records, and

their utter indifference to the Court Notices issued to them time and again.

21. In the aforesaid circumstances, I do not see any justification for setting aside the ex parte judgment and decree. The application for setting

aside the same is accordingly dismissed. The defendants shall pay costs in the sum of Rs. 5,000/- to the Delhi High Court Legal Aid Services

within four weeks of the passing of this order.