

(2017) 01 RAJ CK 0060
In the Rajasthan High Court
Case No : 5859 of 2016

Smt.Takshshila Dwivedi d/o Late Shri Sharda Prasad	APPELLANT
Vs	
Ramesh Chandra Nagda s/o Roshan Lal Nagda	RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 9 Rule 13](#)

Citation : (2017) 01 RAJ CK 0060

Hon'ble Judges : Pankaj Bhandari

Bench : SINGLE BENCH

Advocate : Sanjay Nahar, Deelip Kawadia

Final Decision : Disposed

Judgement

1. The petitioner has preferred this writ petition aggrieved by order dated 13.09.2012 passed by Civil Judge (Senior Division), Udaipur and order dated 06.04.2016 passed by Additional District Judge No.2, Udaipur, vide which the application filed by the petitioner/defendant under Order 9 Rule 13 CPC was rejected.
2. The brief facts of the case are that the respondent/plaintiff filed a suit for malicious prosecution against the petitioner on 29.10.1999. The suit was decreed ex parte on 01.04.2004. The execution petition was filed by the plaintiff, in which notices were served on the petitioner on 29.03.2008. The petitioner moved an application for setting aside the ex parte

decree on 19.03.2010 stating therein that she received the information about the ex parte decree from the Advocate of the plaintiff/respondent on 04.03.2010. The application for setting aside the ex parte decree was rejected by the trial court on 13.09.2012 and the appeal preferred by the petitioner was dismissed by the appellate court on 06.04.2016, aggrieved by which the present writ petition has been filed.

3. It is contended by counsel for the petitioner that service of the summons in the suit and the notices in the execution proceedings were manipulated, as no notices were served on the petitioner and the petitioner, for the first time, came to know about the ex parte decree on 04.03.2010.

4. In support of his contention, counsel for the petitioner has placed reliance on N. Balakrishnan Vs. M. Krishnamurthy, AIR 1998 SC 3222, wherein delay of 883 days in filing of application for setting aside the ex parte decree was condoned.

5. Counsel for the petitioner has also placed reliance on The State of West Bengal Vs. The Administrator, Howrah Municipality & Ors., AIR 1972 SC 749, wherein the Apex Court has observed that expression "sufficient cause" should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

6. Counsel for the respondent has opposed the writ petition. His contention is that the petitioner is in a habit of changing her signatures. Service of notices has been effected by two officers of the court and there is no allegation against the officers. It is also contended that the matter pertains to an amount of Rs.45,000/- only, and therefore, the question of manipulating the process server is not probable.

7. It is further contended by counsel for the respondent

that the petitioner in her application has not mentioned that the notices of the execution petition were not served upon her. In that event, since the notices were served on 29.03.2008, the application under Order 9 Rule 13 CPC having been filed on 19.03.2010 is highly belated.

8. It is also contended by counsel for the respondent that the contention of the petitioner that she received the information on 04.03.2010 from counsel of the plaintiff is also not believable, as the plaintiff's counsel has given an affidavit that he has not informed the petitioner about the ex parte decree.

9. I have considered the rival contentions of the parties and have also perused the judgments relied upon by counsel for the petitioner and have also perused the documents pertaining to service of notices.

10. On perusal of the signature on the notices, which were sent in pursuance of the application filed for execution of the decree, it appears that the same bears the signatures of the petitioner as the same has similarity with the signatures put by the petitioner on her application for setting aside the ex parte decree. The court below has therefore, rightly held that the notices of the execution petition were served on the petitioner on 29.03.2008 and the application for setting aside the ex parte decree is highly belated.

11. There being no sufficient cause pleaded by the petitioner for not moving the application within the prescribed period of thirty days after receipt of the information on 29.03.2008, there was no justification for the trial court and the appellate court to set aside the ex parte decree. The rulings cited by counsel for the petitioner do not apply to the facts of the present case, as there is no bona fide of the petitioner for not

moving the application immediately after receipt of the notice of execution.

12. The orders impugned therefore, do not call for any interference and the writ petition deserves to be dismissed.

13. Consequently, the present writ petition is dismissed.

The stay application also stands disposed.