
(2002) 05 DEL CK 0154

In the Delhi High Court

Case No : I.A. 12434 of 2000 in Suit No. 2190 of 2002

Sunder Kukreja and Others

APPELLANT

Vs

Mohan Lal Kukreja and Others

RESPONDENT

Date of Decision : 30-05-2002

Acts Referred:

Advocates Act, 1961 — Section 49
Arbitration Act, 1940 — Section 20, 41

Citation : (2002) 3 CivCC 475 : (2002) 98 DLT 704 : (2002) 64 DRJ 416 :
(2002) 4 RCR(Civil) 650 : (2003) 1 RCR(Rent) 426

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Amit S. Chadha and Ritesh Kumar, for the Appellant; P.N. Lekhi A.P. Aggarwal, Y.R. Sharma, R.K. Sharma, for R.D. Jolly, for the Respondent

Judgement

Mukundakam Sharma, J.—This is an application filed by the petitioners under Order 9 Rule 9 of the CPC praying of setting aside and recalling the order dated 22.11.2000 dismissing the suit for default and for restoration of the suit to its original number.

2. The present proceeding is registered on the basis of the petition filed by the petitioners u/s 20 and 41 of the Arbitration Act. It is stated on behalf of the petitioners that there is an arbitration agreement dated 10.7.1984 between the parties and since disputes have arisen between the parties out of and in connection with the agreement, which contains the aforesaid arbitration clause, an order should be passed directing for filing of the said arbitration agreement in this court and thereafter referring the disputes arising between the parties to be adjudicated upon and decided through the process of arbitration. The aforesaid petition is contested by the respondents.

3. On 22.11.2000, the suit was listed for hearing arguments on the pending applications. However, none appeared on behalf of the petitioners and, Therefore, this court by order of the same date, i.e. 22.11.2000 dismissed the

suit for default in appearance. On 29.11.2000, an application was filed by the petitioners purported to be under Order 9 Rule 9 of the Code of Civil Procedure. The said application was also supported by an affidavit of the counsel appearing for the petitioners. It is stated in the application that the said counsel was engaged by the petitioners and he also filed his vakalatnama on 10.10.2000. It is also stated that the counsel inspected the case records and after inspection the next date in the suit was inadvertently noted as 27.11.2000 instead of 22.11.2000. It is further stated that when on 27.11.2000 the case was not listed in the daily cause list, the counsel for the petitioners on 28.11.2000 moved an application for inspection of the records and came to know that the suit was dismissed on 22.11.2000 for default in appearance. It is also stated that the said counsel was out of station for the wedding of his colleague on 22.11.2000 and, Therefore, he could not have checked the cause list. It is pointed out that non-appearance of the counsel for the petitioners was unintentional and bonafide and the same is required to be condoned.

4. The aforesaid application, which is supported by an affidavit of the Advocate also, is opposed by the respondent No.1, who has filed a reply to the said application. It is stated in the reply that the aforesaid application is not filed by a duly authorised person in accordance with law and that the said application is not supported by an affidavit of any of the petitioners or their duly authorised agent, as required under the law. It was also stated therein that the conduct of the Advocate was against the provisions of Standards of Professional Conduct and Etiquette to be observed by the Advocate as made by the Bar Council of India u/s 49(i)(c) of the Advocate Act, 1961. It was also submitted that the aforesaid application supported by an affidavit is self-contradictory and, Therefore, the said application is required to be dismissed.

5. Subsequent to filing of the aforesaid reply, an affidavit has been filed by Sh. Sunder Kukreja contending, inter alia, that he is the petitioner No. 1 in the aforesaid suit. He was also stated in his affidavit that all the averments contained in the application under Order 9 Rule 9 of the CPC were drafted according to his instructions. Along with the said affidavit a fresh vakalatnama is filed authorising Sh. Rajnish Ranjan and Sh. Amit Chadha, Advocates to appear on behalf of the petitioners.

6. I have considered the submissions of the learned counsel appearing for the parties and also perused the records.

7. It transpires from the records that the records were inspected by the counsel engaged by the petitioners on 14.11.2000. the next date which was fixed for the suit was 22.11.2000. It is, however, stated in the application filed under Order 9 Rule 9 of the CPC that on inspection of the said records, the counsel noted the date as 27.11.2000 instead of 22.11.2000. Therefore, when the matter was called out on 22.11.2000 none was present on behalf of the petitioners and accordingly the suit was dismissed for default in appearance. The application seeking for setting aside the order dt.22.11.2000 and restoration of the suit/

petition to its original number was filed immediately thereafter i.e. on 29.11.2000. The said application was supported by the affidavit of the counsel of the petitioners. As an objection was taken by the counsel for the respondents that the said application was not supported by an affidavit of a duly authorised person, namely, any of the petitioners or their authorised agent, an affidavit has since been placed on record, which is sworn by the petitioner No.1. Counsel Mr. Amit Chandha is also a counsel, who is engaged by the petitioner. It is true that earlier the application was not supported by an affidavit filed on behalf of the petitioners but the same was supported by an affidavit filed by the counsel, who has taken the responsibility on his shoulder for his non-appearance on behalf of the petitioners.

8. Taking the entire facts and circumstances into consideration and also the fact that now the application is supported by an affidavit sworn by the petitioner No. 1, I am satisfied that there was sufficient cause and reason for non-appearance and that the petitioner cannot be allowed to suffer for laches or lapses, even if there be any, on the part of the lawyer of the petitioner. I am, Therefore, of the considered opinion that this application should be allowed in the interest of justice, which I hereby do subject, however to payment of costs of Rs.5,000/- payable by the petitioners to the respondent through counsel, within six weeks. The order dt.22.11.2000 dismissing the petition for default in appearance stands set aside and recalled and the suit is restored to its original number.

9. Let the suit be listed on 29.7.2002 for arguments on the pending applications. In the meantime, a short synopsis of all the pending applications shall be filed by the petitioners.