

(2012) 04 DEL CK 0327

In the Delhi High Court

Case No : Regular First Appeal No.325-26 of 2006

The Principal Chief Conservator of Forests and Anr

APPELLANT

Vs

Rail India Technical and Economic Services Ltd.

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3, 96

Citation : (2012) 04 DEL CK 0327

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Trideep Pais with Mr. Ashutosh Sitaraman, for the Appellant; J.C.Seth with Mr. M.K.Pathak, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J.Mehta, J

1. The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 12.12.2005 rejecting the application filed on behalf of the appellants/defendants for condonation of delay in filing appearance under Order 37 CPC. The dispute in the present case is between two arms of the Government. The respondent/plaintiff is a Central Government Public Sector Undertaking (CPSU) and the appellants/defendants are the State of Karnataka. The respondent/plaintiff filed the subject suit for recovery of Rs.18,29,124/- on the ground that it carried out survey and demarcation of the boundary of forest in the State of Karnataka for which an invoice was raised, which was not paid and therefore the subject suit under Order 37 was filed.

2. The appellants/defendants were served in the suit on 8.8.2005. As per Order 37 CPC, the appearance ought to have been filed within 10 days, i.e. by 18.8.2005. The appellants/defendant, however, appeared in the Trial Court on 10.9.2005 and filed a memo of appearance through their Advocate. The

appellants/defendants also filed photocopy of the application seeking condonation of delay in filing the appearance. Trial Court adjourned the case on 10.9.2005 to 11.11.2005 and on which date the actual application for condonation of delay in filing the appearance was filed.

3. It has been held by the Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, that once there is delay, obviously there is some amount of negligence. The Supreme Court has said that unless the negligence is total want of action or gross negligence, delay must be condoned because there is no interest of a person to file the proceedings with any delay.

4. In the present case, the appellants/defendants were served on 8.8.2005. Though the original summons have not been filed on record, a photocopy has been filed which shows receipt of the summons on 8.8.2005. The appellants/defendants are the State Government, and not a private party and therefore I would like to believe the fact that the appellants/defendants were served on 8.8.2005. As per Order 37(3)(1), appearance ought to have been filed by 18.8.2005 but appearance has been filed on 10.9.2005, i.e. with a delay of 22 days. A similar issue came for consideration of this Court in the case reported as M/s NEPA Ltd. Vs. M/s Media Asia Pvt. Ltd., . In the case of M/s. NEPA Ltd. (supra), after considering two earlier judgments of this Court, it has been held that hyper technical view for filing appearance under Order 37 must not be taken and filing of a Vakalatnama can also be treated as filing of appearance in terms of Sub-rules (1) & (3) of Order 37 Rule 3 CPC. There is no specific format of filing an appearance under Order 37(3)(1). In the present case, Trial Court record shows that there is, in fact, a proper memo of appearance filed on behalf of the appellants/defendants through their Advocate on 10.9.2005. Therefore, there is a delay of 22 days in filing of appearance in a suit filed under Order 37 CPC. In my opinion, the delay of 22 days and, considering that the appellants/defendants are a State Government, and the fact that it was not situated in Delhi, i.e. it was situated in Karnataka and some amount of delay has taken place, delay is not such so as to be called callous negligence or total inaction/want of action so that the delay should not be condoned. I do not find that the Trial Court is justified in alleging malafides or bad motive to the appellants/defendants inasmuch as appearance indeed has been filed on 10.9.2005 on behalf of the appellants/defendants and therefore at best there would be a delay of 22 days in filing of the appearance.

5. The appellants/defendants had deposited the decretal amount in this Court and which was withdrawn by the respondent subject to furnishing of bank guarantee.

6. Accordingly, while allowing the appeal and setting aside the impugned judgment and condoning the delay in filing appearance of 22 days, I consider it fit, in the interest of justice, that the respondent can retain the amount received by it pursuant to the orders of the Court, however, the respondent will continue to renew the bank guarantee till the disposal of the application which will be filed

by the appellants/defendants for leave to defend or if so required will abide by the disposal of the suit if leave to defend is granted subject to terms of deposit. In view of the above, the appeal is accepted. Impugned judgment is set aside and the delay in filing of appearance on behalf of the appellants/defendants stands condoned.