

(1979) 03 DEL CK 0018

In the Delhi High Court

Case No : Regular First Appeal No. 46 of 1978

Union of India

APPELLANT

Vs

Bhagwana

RESPONDENT

Date of Decision : 07-03-1979

Acts Referred:

Citation : (1979) 15 DLT 352

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : Rekha Sharma, K.L.Sharma and Jai Ram Singh, for the Appellant;

Judgement

Avadh Behari, J.

(1) The appeal R.F.A. No. 46 of 1978 was filed by the Union of India on May 23, 1977. The sole respondent to the appeal was admitted on January 31, 1978.

(2) On December 12, 1978, service of the appeal was effected. The process server went to the respondent's place on December 12, 1978. His grandson Jurnail Singh was present. He accepted a copy of the notice and the grounds of appeal. The process server took evidence of one witness at the time of service and submitted his report regarding the service of the respondent to the court on December 14, 1978 with his usual affidavit in support thereof.

(3) The respondent did not engage any counsel No. 1 put in appearance on his behalf. The office accordingly issued a notice on February 7, 1979 for February 13, 1979, the actual date fixed for hearing before the court. The notice said.

"TAKE notice that the case noted above will be fixed for hearing before this court on 13-2-79 (Actual). You may appear before the court on the said date either in person or through an advocate duly appointed by you for the purpose."

It is admitted that this notice issued on February 7, 1979 was served on the respondent on February 10, 1979.

(4) On February 23, 1979, the appeal came for hearing before me. On behalf of the Union of India counsel appeared. Pandit Jai Ram Singh, Advocate was present on behalf of the respondent Bhagwana. I dismissed the appeal of the Union of India leaving the parties to bear their own costs. Following my own previous decision in the case of Union of India v. Ram Kishan R.F.A. 46 of 1977, decided on that very day the appeal of the Union of India was dismissed. It is necessary to state here that in Ram Kishan's case I had enhanced the compensation by Rs. 1.00 per square yard in the cross-objections filed by the owner. But as in the present appeal of the Union of India there were no cross-objections of respondent Bhagwana he got nothing. Only the appeal brought by the Union against him was dismissed. This was the end of the matter so far as the Union's appeal was concerned.

(5) On March 2, 1979, the respondent moved this present application under S. 151, Code of Civil Procedure. The ground stated in the application is that the service of the appeal was effected on Jurnail Singh and Jurnail Singh is a minor aged about 13 years and Therefore it is no service on the respondent in the eye of law, Jurnail Singh was also produced before me. Mr.K.L. Sharma on behalf of the respondent submits that the service ought to be deemed to have been effected on the respondent on February 10, 1979 when the actual date of hearing notice was received from the court and, Therefore the appeal was wrongly dismissed on February 23, 1979, without affording the respondent an opportunity to file cross-objections within one month from February 10, 1979. He filed the cross-objections (C.M. 291 of 1979) on March 2, 1979 and it is that these cross-objections he now heard as the time for filing the cross-objections has not yet expired. For this purpose it is submitted that the appeal be revived.

(6) Miss Rekha Sharma on behalf of Union of India opposes this application on the short ground that cross-objections can be filed under O. 41 R. 22. CPC only in a pending appeal and not in an appeal which has been dismissed by the court as in this case. The appeal of the Union of India was dismissed on February 23, 1979 as I have said.

(7) It is quite plain from rule 22 of order 41 that a respondent may file cross-objections to the decree in a pending appeal. The time limit is one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal. It is abundantly clear from sub-rule 4 of rule 22 of order 41 that in any case in which the respondent has filed a memorandum of cross objections and the original appeal is withdrawn or is dismissed for default, the objections to be filed may nevertheless be heard and determined by the court. But if the appeal is not pending and has been dismissed on merits in the presence of counsel for the respondent as is the case here, he cannot come latter and say that the appeal be restored and that his cross-objections which he then files may be taken up for hearing.

(8) It is not disputed that the appeal was dismissed on February 23, 1979. It was done in the presence of the respondent's counsel. There is nothing to show on

the record that any prayer was made that the time for filing cross objections has not expired and that the court should not proceed to hear the appeal. Nor was any objection taken to the validity of service effected on December 12, 1978. Now that the judgment has gone in favor of the owner in a similar case the law does not permit the respondent Bhagwana to take objections which ought to have been raised at the appropriate stage during the pendency of appeal.

(9) For these reasons I find no merit in this application and dismiss the same and the cross-objections also.