

(1979) 09 DEL CK 0012

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 835 and 838 of 1979 and Regular First Appeal No. 87 of 1976

Union of India

APPELLANT

Vs

Jagtar Singh

RESPONDENT

Date of Decision : 04-09-1979

Acts Referred:

Citation : (1979) ILR Delhi 327

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

Bench : Single Bench

Advocate : Rekha Sharma and R.B. Tahilramani, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) On January 20, 1976, the appellant Union of India brought an appeal from the order of the Additional District Judge dated August 28, 1975 in a land acquisition case in which the court had enhanced the compensation for the acquired land of the owner-respondent in village Jaitpur.

(2) On April 14, 1976, B. C. Misra, J. admitted the appeal to a division bench and made an order for printing the records.

(3) In the appeal the Union of India also moved an application (C.M. 208 of 1976) under O. 41 rule 5, CPC praying for an order of stay of payment of the enhanced compensation to the owner. Of this application B. C. Misra, J. issued notice. Accordingly a notice dated May 3, 1976 was sent to the respondent informing him that "an appeal and miscellaneous application (copies enclosed) have been filed in this court in the case noted above and the same have been admitted to hearing by an order of this court dated 14th of April, 1976". The notice then went on to say that the C.M. will be listed before the court on May 27, 1976 (actual) on which date "you may appear before the court either in person or through counsel". This notice is headed as a notice in "C.M. No. 208 76 in and R.F.A. 87 76". This notice was served on the respondent personally on

May 14, 1976 and he signed it in token of acknowledgment.

(4) The application was listed for hearing on May 27, 1976 before B. C. Misra J. No one appeared on behalf of the Union of India. Mr. V. K. Kapila appeared for the respondent. The judge made an order that the amount of enhanced compensation be paid to the respondent on furnishing security. So far as this application was concerned this was the end of the matter.

(5) The appeal was listed for hearing before me on August 8, 1979. On that date counsel for the respondent Shri R. B. Tahilramani, asked for time to file cross-objections. At his request I adjourned the matter. The respondent filed cross-objections on August 9, 1979 with an application under s. 5 of the Limitation Act.

(6) The question at issue is : Are the cross-objections within time ? Counsel for the respondent contends that cross-objections are within time as at no time notice of the actual hearing of the appeal was issued to the respondent as required by rules 12 and 14 of Order 41 of the Code. It is said that only a notice of the application (C.M. 208 of 1976) was issued but no notice of the hearing of the appeal was ever issued to the respondent. In this connection counsel called attention to rules 12, 14 and 22 of O. 41 where a notice of the day fixed for the hearing of the appeal is required to be issued to the respondent if the appellate court does not dismiss the appeal under rule 11 of O. 41 of the Code. He has also drawn my attention to Form No. 6 of Appendix "G" of the First Schedule to the CPC where a model form of notice to respondent of the day fixed for the hearing of the appeal under Order 41 rule 14 is given. I was referred to 1939 Oudh WN 539,(1) in support of the submission that after admission of the appeal it is incumbent upon the appellate court to issue a notice to the respondent of the day fixed for the hearing of the appeal. As this was not done, counsel contends, the respondent is entitled to file cross-objections immediately the appeal was shown on board.

(7) One important point in this case is that the notice was sent to the respondent of the application as well as of the appeal. In the notice dated May 3, 1976 he is informed of the admission of the appeal as also of the application. It is a notice not merely in C.M. 208 of 1976. It is also a notice in the appeal (R.F.A. 87 of 1976). It is in pursuance of this notice that the respondent's counsel Mr. V. K. Kapila appeared on May 27, 1976. Therefore, it can safely be concluded that the respondent had notice both of the appeal and the application. Once counsel has entered appearance for his client, respondent in this case, in answer to the notice of appeal given to the party he cannot insist upon a second notice of the hearing of the appeal. A notice of the day for the hearing of the appeal cannot in the nature of things be issued by this court when counsel has put in appearance. An actual date notice to the party is given when the parties are not represented by counsel. Rule 8 of Chapter III-A of Volume 5 of the Rules and Orders of the Punjab High Court applicable to this court reads as under : -

"8. Parties and their Advocates are required to attend the court on the day or

days for which their cases are set down, and on subsequent days until their cases are disposed of or are postponed.

PROVIDED that intimation of the pacca date fixed in a case will be sent by registered post card (A.D.) to such parties as are not represented by counsel. Such post card shall be sent to an address to be given by the party in response to the original notice of appeal calling upon him to furnish an address for service for the purposes of the appeal, or if he fails to give such address within one month of the service of such notice of appeal, to his address as given by the appellant in the memorandum of appeal. The posting of such post card shall be deemed to be sufficient intimation to the party of the date fixed in the case.

PROVIDED further that in a case in which an Advocate not ordinarily resident in Chandigarh has to appear, the Deputy Registrar may fix an "actual date" if such Advocate puts in a written request for that date to which he himself has obtained the consent of other counsel in the case. Such date shall not be altered except by any order of the Bench concerned, or of the first Division Motion Bench if the case is not listed before a particular Bench."

(8) The rule clearly shows that the party is not entitled to an "actual date" notice if he is represented by a counsel. Here the respondent's counsel was present. No further notice was required to be sent.

(9) This rule has been framed by the High Court under s. 122 of the Code which empowers it to make rules regulating its own procedure and thereby "annul, alter or add to" all or any of the rules in the First Schedule.

(10) From the record it appears that Mr. V. K. Kapila, Advocate did not file his power of attorney in this case on behalf of the respondent But that is a lapse of which the respondent cannot take advantage. Having authorised counsel to appear he cannot turn round and say that he was not represented by counsel in court. He cannot have the best of both worlds. Nor is this his case in the application he has now made. The sole ground on which he founds his right to file cross-objections in 1979, though notice of the appeal was given to him on May 3, 1976, is that he was never served in the appeal and in any case the notice issued to him dated May 3, 1976 is not a notice as required by law as it does not give a date for the hearing of the appeal. That the notice sent to him did not give a date for the hearing of the appeal is true. But he had notice of the appeal alright. His counsel appeared. Therefore, he was not entitled to another "notice of the day fixed for hearing the appeal", as he now claims. The reason is that the record had to be printed. How long will that take nobody could say ? Nor was it possible to foretell when the appeal will be heard. Counsel had been engaged. It is the duty of counsel to attend the court on the day or days for which his case is set down for hearing until it is disposed of. This is the rule. Therefore, the requirement of notice of the hearing of the appeal on which counsel insists so much was in this case a mere formality, an idle formality which would not have served any useful purpose. Actual date of hearing could not be

fixed because the respondent was represented by counsel. If he had not been represented by counsel he was entitled to a registered A.D. notice.

(11) A farzi date notice is issued to the respondent according to the practice and procedure of this court. But that is also not a notice for hearing the appeal. It is necessary to "import a little common sense" into cases such as this, to use a phrase of Pollock C.B. in. The practice and procedure of this court as regulated by our rules has to be kept constantly in mind. In my opinion, the respondent has no right to file cross-objections in 1979 when he had himself received the notice of the appeal on May 14, 1976. That it was not a notice of the day fixed for hearing the appeal is true. But it was neither necessary nor practicable. It was not necessary because the respondent had engaged a counsel who put in appearance on his behalf. It was not practicable because after printing the appeal was to be set down for hearing. When a party is represented by a counsel notice is not necessary because advocates practicing here are not entitled to any notice as they are expected to keep themselves informed about the cases fixed for hearing.

(12) The cases to which I was referred are distinguishable on the short ground that neither was there in those cases a rule (rule 8) such as we have nor did any counsel appear in them. The central fact in the instant case is the appearance of the respondent by his counsel pursuant to a composite notice.

(13) It was said that the notice of appeal served in this case on the respondent was a nullity because it was not in conformity with rules 12 and 14 of O. 41, Code as it did not fix a day for the hearing of the appeal. In my opinion, this argument is without substance. The notice was a composite notice. It was a notice of the appeal as well as of the C.M. That the notice did not fix a day for hearing the appeal is a mere technicality. What is of essence is that a party must have notice that an appeal against him has been brought in the court which has not been dismissed in limine and has been admitted to a hearing. From this notice of appeal the right to file cross-objections springs.

(14) We regulate our own practice and procedure. That power is given to the court by s. 122 of the Code. There is one limitation on this power. Whatever we do must not conflict with the principles contained in the body of the Code. Subject to this the court can devise its own procedure best suited to advance justice. To accept the argument of a separate notice after counsel has entered appearance on behalf of a party would be "merely piling unreason upon technicality", to use the words of Rankin C.J.

(15) Then it was said that the court had the power to extend the time under rule 22 of O. 41, Code. No other ground is urged to extend the time in this case except the ground which I have already considered and rejected.

(16) For these reasons I hold that the cross-objections are barred by time. The cross-objections are. Therefore, dismissed on the ground of limitation.