

(2009) 01 DEL CK 0201

In the Delhi High Court

Case No : C.M. No"s. 11770-11712 in FAO (OS) 512 of 2007

Vijay Cables Industries and Another

APPELLANT

Vs

The National Small Scale Industries Corporation Ltd.

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27(1)(B), Order 43 Rule 2, 114, 151

Limitation Act, 1963 — Section 5

Citation : (2009) 01 DEL CK 0201

Hon'ble Judges : Reva Khetrapal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Suman Kapoor, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.

C.M. No. 11770/08 in FAO (OS) No. 512/07:

1. This is an application filed by the appellants u/s 114 read with Section 151 of the CPC for recalling of order dated 3rd March, 2008.

2. An appeal was preferred by the appellants against the order dated 6th July, 2007 passed by the learned Single Judge dismissing the application filed by the appellants praying for setting aside the ex parte decree. All the contentions which are now raised in this application and argued before us have already been considered and dealt with by a Division Bench of this Court of which one of us (Reva Khetrapal, J.) was a member. The relevant portion of the order dealing with the contentions again sought to be raised before us reads as under:

4. The aforesaid contention of the appellant was considered by the learned Single Judge. The learned Single Judge has appreciated the averments made in the application and found the ground stated therein for non-appearance to be vague. In the said application, the only statement that was made by the appellants is

that despite due diligence, both the defendants No. 1 and 2 could not put in appearance. However, the documents filed in support of the contention in the said application were in the nature of some medical records. The said medical records which are filed by the appellants in support of the averments made in the application are of the period prior to the year 1992. The suit was directed to be proceeded ex parte by an order dated 14.12.2005 whereas the suit filed by the appellants was dismissed for non-prosecution on 13.09.2004. There is only one medical certificate after the year 1992, which is of the year December, 1999 to the effect that Mr. Vijay Kumar Bhatia has angina problem. Persons with such problems are also prosecuting their cases effectively in Courts and, therefore, the learned Single Judge did not find sufficient cause either to recall the order dated 13.09.2004 or to set aside the ex parte decree passed in the suit.

5. The grounds given are assailed before us by the Counsel appearing for the appellants very vehemently contending, inter alia, that if the appellant was unwell, in that event the learned Single Judge should have set aside the ex parte decree and also should have recalled the order dated 13.09.2004 dismissing the suit filed by the appellants for non-prosecution and given opportunity to the appellants to proceed with both the suits.

6. We are, however, unable to accept the aforesaid contention of the Counsel appearing for the appellants for the simple reason that it appears the suit was coming up to a close as it was at the stage of recording of evidence. The appellants, at least in the suit filed by the respondent, should not have defaulted in making appearance and thereby allowed the suit to be proceeded ex parte. Even thereafter, no steps were taken by him to get the said order vacated. The record shows that after the suit was directed to be proceeded ex parte and the same proceeded accordingly, and an ex parte decree was passed after about a year of the said date, for the first time an application was filed for setting aside the decree. That also on the ground of medical reasons, which is again unsupported by the documents on records for the relevant period during which the aforesaid default was committed by the appellants.

7. There are some further documents sought to be placed on record which we are not inclined to look into at this stage. They were not placed before the learned Single Judge, and appear to have been placed on record as an afterthought. Since those were not placed before the learned Single Judge, we are not inclined to look at the said documents.

3. This Court has already come to the conclusion that the appellants are not entitled for any relief from this Court. There is no merit in this application. Hence the same is dismissed.

CM No. 11771 (Under Order 43 Rule 2 read with Order 41 Rule 27(1)(B) and CM No. 11772/08 (under Section 5 of Limitation Act)

4. In view of the order passed in the review application, these applications do not survive for consideration. The same are accordingly dismissed.