

Madho Singh and Others Vs. Ramkali and Others

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Court : Madhya Pradesh

Decided On : Mar-24-2014

Judge : Sujoy Paul

Appeal No. : Writ Petition No. 4136 of 2013

Appellant : Madho Singh and Others

Respondent : Ramkali and Others

Advocate for Pet/Ap. : Shri. S.K. Shrivastava

Judgement :

Sujoy Paul, J:

1. This petition is directed against the order dated 16-5-2013, whereby the application preferred by the petitioner under Order 9 Rule 7, C.P.C. is rejected by the Court below.

2. The plaintiffs filed a suit against defendants/petitioners. In the said suit, the Court below fixed a date for plaintiffs' evidence. On the said date, i.e., 22-3-2013, the petitioners/defendants could not appear. The Court below proceeded ex parte against the defendants. The petitioners/defendants preferred an application under Order 9 Rule 7, C.P.C. (Annexure P-6), dated 9-5-2013. The said application was supported by an affidavit. In the said application, it was contended by the petitioners/defendants that the civil suit was fixed on 22-3-2013. On the said date,

the petitioners/defendants were required to go to Ambah where their relative Resham was seriously ill. On 10-4-2013, his relative Resham expired because of said ailment. Because of death of Resham, the defendants again went to Ambah and remained there till 18-4-2013, the date of 13th day ceremony. Thereafter, the petitioners came back to their place but during this time the daughter of Madho (petitioner No. 1) became unwell. To attend the daughter, the defendants were required to visit Orai (U.P.). They came from Orai on 7-5-2013 and then contacted their Counsel. The Counsel informed that Court below has passed an ex parte order against them. For these reasons, it was prayed that the absence was for the reasons, which were beyond the control of the petitioners and, therefore, application under Order 9 Rule 7, C.P.C. be allowed. The Court below rejected the said application on the ground that along with the said application preferred under Order 9 Rule 7, C.P.C., no application for condonation of delay is filed. The averments mentioned in the application are not trustworthy. The statement of Counsel that he was busy in other Court on 22-3-2013 was also held to be unreliable.

3. Shri S.K. Shrivastava, learned Counsel for the petitioner, submits that there is no limitation prescribed under Order 9 Rule 7, C.P.C. He further submits that the application was supported by an affidavit and, therefore, there was no reason to disbelieve the same. He submits that the Court below has taken a hyper technical approach.

4. Per contra, Shri U.K. Bohre supported the order and submits that the petitioners/defendants remained absent for considerable long time and, therefore, the Court below has not erred in rejecting their application.

5. I have heard the learned Counsel for the parties and perused the record.

6. It is gathered from the record that the petitioners filed application under Order 9 Rule 7, C.P.C., which was supported by an affidavit. The application shows that they gathered about the knowledge about order dated 22-3-2013 after 7-5-2013 when they came back from Orai (U.P.). It was promptly filed on 9-5-2013. The Delhi High Court in Delhi Development Authority v. Shanti Devi and another,, AIR 1982 (Delhi) 159, opined that when application is filed for setting aside an order

promptly from the date of knowledge, it cannot be dismissed on the ground of not filing it within 30 days. The High Court further opined as under:--

"Where the Counsel for defendant along with an application under Order 9 Rule 7 filed his own affidavit that he was busy in his personal matter and, therefore, he could not attend the Court at the time when the suit was called by the Court and also stated that when he reached the Court at 10.55 a.m. he came to know about ordering of ex parte proceedings, the order proceeding ex parte would be liable to be set aside, as there was good cause for the absence of the Counsel."

7. In the light of aforesaid judgment, it is clear that when the application is supported by affidavit, there is no justification in disbelieving the same. In the opinion of this Court, the petitioners have assigned sufficient cause for setting aside the ex parte order. The Court below has mechanically rejected the said application. No reasons are assigned by the Court below as to why the stand taken by the petitioners/defendants about visiting Ambah is not trustworthy. In the totality of circumstances, in my opinion, in the interest of justice, the impugned order deserves to be set aside and application under Order 9 Rule 7, C.P.C. deserves to be allowed.

8. Resultantly, the impugned order is set aside. The application under Order 9 Rule 7, C.P.C. (Annexure P-6), dated 9-5-2013 is allowed. The Court below is directed to proceed from the said stage. No cost.

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