

Harman Das Sethi and anr. Vs. Haridwar Development Authority

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Court : Uttaranchal

Decided On : Apr-08-2005

Reported in : 2005(2)AWC1482(UHC)

Judge : Rajesh Tandon and; J.C.S. Rawat, JJ.

Acts : Limitation Act - Sections 5; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rules 9 and 13

Appeal No. : A.O. No. 39 of 2001

Appellant : Harman Das Sethi and anr.

Respondent : Haridwar Development Authority

Advocate for Def. : N.S. Pundir, Adv.

Advocate for Pet/Ap. : Sharad Sharma, Adv.

Disposition : Appeal allowed

Judgement :

Rajesh Tandon, J.

1. Present appeal has been filed against the order dated 28.4.2000 passed by the Civil Judge (S.D.), Haridwar in Misc. Case No. 17 of 1999 and 16 of 1999, thereby rejecting the application of the appellant under Order IX, Rule 9, C.P.C.

2. Briefly stated the facts giving rise to the present appeal are that the plaintiff appellant filed a Civil Suit being No. 87 of 1993 before the Civil Judge (S.D.), Haridwar for permanent injunction praying that the defendant may be restrained from interfering in the possession of the plaintiff over the land in dispute. Written statement was also filed by the defendant.

3. The learned counsel for the appellant has submitted that on 11.11.1998 the case was fixed for evidence and adjournment application was filed by the plaintiff and the case was fixed for 6.2.1999. The plaintiff could not come to the Court on the date fixed as he fell ill on 6.2,1999 and could not recover till 12.2.1999 and the suit was dismissed in default of the plaintiff. The learned counsel for the respondent has submitted that on the date fixed in the case, the plaintiff was not 111 - and earlier also dates were taken by him and therefore, in view of the past conduct of the plaintiff, the application was rightly rejected by the Court below.

4. The learned Civil Judge rejected the application of the appellant merely on the ground that the plaintiff failed to prove that he was not able to walk due to illness. Further the Court below has given finding that if the plaintiff was ill he may depute some Pairokar to seek adjournment.

5. A perusal of the record shows that the plaintiff filed his affidavit supported by medical certificate and the same is unrebutted on record.

6. The need of society is that there should be Justice oriented approach and the application should not have been rejected on the ground of technicalities. The Apex Court in *M.S. Grewal v. Deep Chand Sood*, (2001) 8 SCC 151, has held as under:

'Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.'

7. The Apex Court in the case *G.P. Srivastava v. R.K. Raizada*, (2000) 3 SCC 54, has held as under :

'7. Under Order IX, Rule 13, C.P.C. an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex parte decree. The words 'was prevented by any sufficient cause from appearing' must be liberally construed to enable the Court to do complete Justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order IX, Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The Courts have a wide discretion in deciding the sufficient cause - keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If 'sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the Us decided on merits.'

8. Further the Apex Court in N. Balakrishnan v. M. Krishnamurthy, 1998 SC and FBRC 427, observed as under :

'Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly, The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a

lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court, has held that the words 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575 and *State of W.B. v. Administrator, Howrah Municipality*, AIR 1972 SC 749.'

9. In view of the aforesaid observations, the appeal is allowed. The impugned order dated 28.4.2000 is set aside. Application of the plaintiff appellant for restoration is allowed. The trial court is directed to proceed with the case according to law and decide the same expeditiously. The parties are directed to appear before the trial court on 9th May, 2005 No order as to costs.

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