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Court : Supreme Court of India

Decided On : Apr-04-2008

Reported in : AIR2008SC2054; 2008(2)AWC1866(SC); (2008)2CALLT87(SC); JT2008(4)SC565; (2008)5MLJ777(SC); 2008(6)SCALE95; 2008AIRSCW2718; 2008(3)ICC504; 2008(2)Supreme810; (2008) 12 SCC 589

Judge : S.B. Sinha and; V.S. Sirpurkar, JJ.

Acts : Code of Civil Procedure (CPC) - Order 9, Rules 11 and 13

Appeal No. : Civil Appeal No. 2472 of 2008 (Arising out of SLP (Civil) No. 9959 of 2007)

Appellant : Reena Sadh

Respondent : Anjana Enterprises

Advocate for Def. : Rajiv Nanda and ; L.D. Adlakha, Advs.

Advocate for Pet/Ap. : Yashank Adhyaru, Sr. Adv. and; Sarad Kumar Singhania, Adv

Prior history : From the Judgment and Order dated 23.1.2007 of the High Court of Delhi at New Delhi in First Appeal against Order No. 20/2007

Judgement :

V.S. Sirpurkar, J.

1. Leave granted.

2. The present appeal challenges the orders passed by the Delhi High Court dismissing the appeal filed by the present appellant wherein she had challenged the order passed by Additional District Judge, Tis Hazari Courts, Delhi dismissing her application under Order IX Rule 13 of the Code of Civil Procedure.

3. The following facts would help understanding the controversy involved.

The appellant herein was arrayed as a Third Defendant in a Civil Suit filed by Anjana Enterprises, the respondent herein. This suit was initially filed in the High Court of Delhi and was pending there. Along with the appellant there were three other defendants including defendant No. 4- firm M/s. Renuka Inc. The suit was for recovery of Rs. 14,50,000/- together with interest at the rate of 24% per annum both pendente lite and future. During the pendency of the suit the pecuniary jurisdiction of the District Courts was enhanced and, therefore, the suit came to be transferred to the Court of Additional District Judge, Delhi by order dated 8.8.2003. The order reached that court on 25.9.2003. It seems that the court of Additional District Judge thereafter sent notices to the parties and the matter was fixed for 22.10.2003. This order was passed on 25.9.2003 itself and the plaintiff-respondent had noted the further date of 22.10.2003. On 22.10.2003 it was found that the defendants had not been served and therefore, the court passed the order that the defendants and their counsel should be served through the court notice for 1.12.2003. The addresses for these notices were allegedly furnished by the plaintiff-respondent on that date. However, it seems that on 1.12.2003, the Trial Court issued notice only to the counsel of the defendants. The matter was fixed on 7.1.2004 for the appearance of the parties. It seems that on 22.9.2004, the Court proceeded ex-parte against the appellant herein and ultimately an ex-parte judgment and decree was passed on 27.10.2005. This decree was sought to be set aside under Order IX Rule 13 and for that an application came to be filed before the Trial Court. However, the Trial Court rejected the said application requiring the appellant to file an appeal before the Delhi High Court. However, even that appeal was dismissed and that is how the appellant has come before us

by way of the present appeal.

4. Learned counsel appearing on behalf of the appellant urged that both the courts below have not realized that the appellant had no opportunity whatsoever to take part in the proceedings since she was never served a notice of the proceedings which were transferred from Delhi High Court to the Court of Additional District Judge, Delhi. Secondly the learned counsel urged that the true impact and effect of Rule 6 Chapter 13 was also not realized by the courts below under which it was imperative that after the transfer, all the parties were bound to be informed regarding the transfer and the dates. It was further urged that both the courts below have not realized that the counsel who represented the original defendants 1, 2 and 4 was not her counsel and, therefore, the notice served on the said counsel amounted to no notice being served or atleast was not a sufficient notice. Lastly the courts below have not realized that the appellant had no concern whatsoever with the aforementioned defendant- firm of which she was neither a Director nor the partner and thus had no concern with the said loan of Rs. 14,50,000/-.

5. As against this, the learned counsel for the respondent-plaintiff urged that there were circumstances on record to suggest that the appellant was never serious about these proceedings and inspite of number of opportunities having been granted to her she remained dormant in the matter of defending the suit. It was also urged that the appellant did not show the expediency that was expected from her even in the matter of making an application under Order IX Rule 13. It was lastly urged that the application was made only for the sake of protracting the litigation.

6. On this backdrop it will be proper to see the treatment given to the application by the Trial Court as also the Delhi High Court. It is seen from the order of the Trial Court that it was an admitted position that the counsel representing the Original Defendants 1, 2 and 4 did not have a Vakalatnama on behalf of the appellant. The Trial Court, however, went on to note that the counsel for Defendants 1, 2 and 4 put in his appearance on more than one occasions consciously and deliberately on behalf of the appellant also and sought for time to file written statement. Learned

Judge also went on to note that the other defendants were the family members of the present appellant. It was also noted that inspite of the summons, the appellant had not appeared and, therefore, she could not turn around and say that on transfer she was bound to be given the notice of the proceedings. The Court further recorded a finding that the intentions of the appellant were malafide from the day one, which was apparent from the fact that the present appellant had not even furnished the correct address even in the present application under Order IX Rule 13 CPC. The learned Judge also held that it was only this appellant who was looking after the entire business on behalf of defendants 1, 2 and 4 in India as the other individuals were the residents of USA and, therefore, it was not mandatory to issue any court's notice either to the parties or to their counsel. The learned Additional District Judge noted that one Mr. Ajay Amitab Suman was present on the fateful day, i.e., on 8.8.2003 on behalf of the appellant. The learned Judge also noted that the said counsel did represent the interest of the appellant which was clear from the order sheets 21.2.2002, 22.7.2002 and 13.2.2003. The learned Judge, therefore, went on to conclude that the defendant No. 3 (appellant herein) was not interested in defending the matter though she was being represented by the very same counsel who was looking after the interest of defendants 1, 2 and 4 and that she had no cogent explanation for her non appearance. As regard the impact of Rule 6 Chapter 13, the learned Judge concluded that since she had no interest in the matter, it was not necessary to serve her with the notice because under the Rule the word 'parties' only would mean the 'interested parties'. The court also noted that one K.K. Sharma who was appearing on behalf of defendants 1, 2 and 4 also put in his appearance for defendants 1, 2 and 4 and he never bothered to clarify that he did not represent the defendant No. 3 (appellant herein). Ultimately, the Court held that the appellant failed to establish her credentials and that her application amounted to abuse of the process of the court.

7. The High Court firstly noted about the facts regarding the transfer and also found that one Avinash Lakhan Pal, proxy counsel for Mr. K.K. Sharma, Advocate had appeared for Defendants 1, 2 and 4. The High Court noted various dates on which the court hearings were fixed after transfer. The High Court also noted that the interpretation given by the Trial Court to the word 'parties' occurring in Rule 6 Chapter 13 was correct and that only the parties interested were bound to be

served with the notice of transfer of the suit and since the appellant was not interested in defending the suit, it was not necessary to serve her at all. The High Court perused the plaint and found that the appellant was instrumental in reaching the transaction stated in the plaint and ultimately the High Court observed, relying on Order 9 Rule 11 CPC that since the appellant had already the notice of the proceedings before the High Court through her husband on 6.10.2001, it was clear that she was adopting the policy of hide and seek and was taking the court for a ride. The High Court also mentioned that the counsel Mr. L.D. Adlakha and Mr. Ajay Amitabh Suman who appeared on 8.8.2003 before the Joint Registrar should have clarified that they are not representing the appellant (defendant No. 3). The High Court ultimately held that Rule 6 of Chapter 13 was duly complied with.

8. On the backdrop of these findings it is to be seen as to whether there was compliance of Rule 6 Chapter 13 and if there was no compliance, the decree was liable to be set aside under Order IX Rule 13 CPC. Before we approach this question, few admitted facts would be necessary to be noted. They are:

i) The appellant was not being represented by the counsel who appeared in the High Court on behalf of defendants 1, 2 and 4 (Ajay Amitabh Suman and/or K.K. Sharma). Shri L.D. Adlakha who allegedly appeared before the Joint Registrar Shri N.P. Kaushik on 8.8.2003 was not engaged by the appellant being plaintiff's counsel. Thus there was no counsel representing the appellant either before the Delhi High Court or before the Additional District Judge, Delhi.

ii) Admittedly, there was no notice of transfer of proceedings or dates, to the appellant and notice to defendants 1, 2 and 4 was deemed to be sufficient notice to defendant No. 3.

iii) Defendant No. 3 was not proceeded ex-parte before the High Court at any point of time and no order under Order IX Rule 11 CPC was ever passed by the Delhi High Court or even the Court of Additional District Judge, Delhi.

9. The wording of Rule 6 Chapter 13 is as follows:

Records be sent immediately to the court to which case is transferred: when a case is transferred by administrative order from one court to another, the presiding officer to the court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the court to which the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the court passing the order should fix a date on which the parties should attend the court to which the case is transferred.

10. In this case, the matter was transferred by the order of Joint Registrar Shri N.P. Kaushik by his order dated 8.8.2003 which order reads thus:

Present: Mr. L.D. Adlakha for the Plaintiff

Mr. Ajay Amitabh Suman for defendant

S. No. 1441/97

This is a case where the value of the suit for the purpose of pecuniary jurisdictions is less than Rs. 20 lacs. In view of the orders passed by the Hon'ble Chief Justice the present matter is transferred to the court of Hon'ble District Judge Tis Hazari Courts, Delhi assignment to a court of competent jurisdiction. Parties and/or their counsel to appear before the Hon'ble District Judge, Delhi on 25th September, 2003.

This being an administrative order, passed by the Joint Registrar, it was incumbent on the part of the High Court to let all the parties know about the date on which they should appear before the District Judge. In this order the Registrar has recorded the date of 25th September, 2003 as the date on which the parties should appear before the District Judge, Delhi. However, it is obvious that it was only Shri Ajay Amitabh Suman who was appearing for the defendants. There is no reference whatsoever in the above order that Shri Ajay Amitabh Suman was appearing for 'all' the defendants.

11. The language of the Rule provides that the Presiding Officer of the Court from where the matter was transferred (in this case the Delhi High Court) was responsible for informing the parties regarding the transfer as also the date on which the parties were supposed to be present before the court to which the case was transferred (District Judge in this case). Admittedly this did not happen in case of the present appellant who was the original defendant No. 3. It is obvious that the Joint Registrar Shri N.P. Kaushik proceeded under the impression that Shri Ajay Amitabh Suman was appearing for all the defendants. Therefore, there was no compliance with this Rule. The Courts below have observed that on this date the appellant was not appearing before the court at all though she was served way back in 2001. However, it is nobody's case and indeed the records do not show that she was proceeded ex-parte by the High Court. Therefore, she was certainly in the array of parties on 8.8.2003 and the Rule thus applied to her with full force. It cannot, therefore, be said that the word 'parties' used in the Rule did not include her who was original defendant No. 3. In our opinion the courts below have obviously committed an error in treating that the appellant not being an interested party was not required to be informed of the transfer of the case as also the date on which the parties were expected to appear before the court to which the case was transferred. It is to be seen that in the language of the Rule the word used is 'parties' and not 'interested parties'. If we accept the interpretation put forth by the courts below, the word 'interested' would have to be read in the Rule which is not permissible.

12. From the very language of the Rule, the Rule has to be held as mandatory Rule and indeed in the absence of such Rule, the concerned parties would have no notice of the transfer of the case nor of the proceedings in such a transferred case. The Rule, therefore, has to be held requiring the strict compliance of the same.

13. This is apart from the fact that the counsel appearing for the defendants 1, 2 and 4 was under no duty to inform that he was not representing the defendant No. 3 (appellant herein). Once it is accepted that there was no counsel representing the defendant No. 3 (appellant herein) it was incumbent on the part of the Registrar to let the appellant know about the date in this case, i.e., 24th

September, 2003.

14. Further when we see the order sheet of the court of Additional District Judge, Delhi, it is apparent that on 25.9.2003 neither the plaintiff nor the defendants appeared before the court and later on the same date one Ghanshyam Dass, partner of Anjana Enterprises, i.e., the plaintiff appeared before the court and noted the date. Even on that date no other defendant had any knowledge about the further date on which the suit was fixed before the Additional District Judge. It is obvious that thereafter the matter was fixed on 1.12.2003 on which date the defendant was not served and, therefore, the matter was adjourned to 7.1.2004 when again the matter was adjourned for fresh notice to the defendants and was fixed for 9.4.2004 and it was only on 12.4.2004 that one Avinash Lakhan Pal, a proxy counsel for Shri K.K. Sharma, Advocate appeared and then the matter was adjourned for filing the Reply. (There appears to be an obvious mistake in the order passed by the High Court inasmuch it is mentioned that Shri Ajay Amitabh Suman appeared on 12.4.2004 and the matter was adjourned to 8.4.2004 which is not possible.) It seems that thereafter also at no point of time was the appellant ever served or got an opportunity to pray for time to take part in the suit. It must be remembered at this juncture that till this time there were no ex-parte proceedings ordered against the present appellant either before the Delhi High Court or before the Additional District Judge, Delhi. From the orders before us it seems that ultimately the ex-parte evidence was ordered on 17.8.2004 and the matter was fixed on 29.10.2004 and thereafter on various dates for ex- parte evidence and ultimately the ex-parte decree was passed on 27.10.2005. It is further obvious that on these dates the other defendants did not remain present but more particularly, the present appellant was never served. Under these circumstances it is difficult to hold that there was a proper compliance of Rule 6 on the transfer of the matter from Delhi High Court to the court of Additional District Judge, Delhi. Once it is held that the appellant had no notice whatsoever and further she was bound to be given the notice of transfer, she being the party before the Delhi High Court , all the other contentions raised by the decree-holder and the findings recorded by the courts below must fall down.

15. We find no duty in the counsel who was representing the defendants 1, 2 and 4 to inform about the non service of notice to this appellant. All the other factual findings regarding the mala fides on the part of the defendant No. 3 (appellant herein) or the so-called designs by her to protract the suit go in the background once it is held that she did not have any notice of the transfer. It was the duty of the Registrar of the Delhi High Court and further it was the duty of the court presiding, i.e., the Additional District Judge to see that the decree is passed only after the proper service. In the absence of a notice, we do not see any justification to pass the ex-parte decree and, therefore, we are of the clear opinion that both the courts below have erred in rejecting the application under Order IX Rule 13. In our opinion the non service of the notice was a sufficient reason to set aside the decree against the defendant No. 3 (appellant herein).

16. In view of the above we set aside both the orders of the courts below and allow the application under Order IX Rule 13. Counsel's fee fixed at Rs. 10,000/-.

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