

Delhi Development Authority Vs. Shanti Devi and anr.

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Court : Delhi

Decided On : Sep-03-1981

Reported in : AIR1982Delhi159; 20(1981)DLT415

Judge : Sultan Singh, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 7

Appeal No. : Civil Revision Appeal No. 78 of 1981

Appellant : Delhi Development Authority

Respondent : Shanti Devi and anr.

Advocate for Pet/Ap. : H.S. Mac, Adv

Judgement :

Sultan Singh, J.

(1) The revision petition under Section 115 of the Code of Civil Procedure is directed against the order dated 6th November, 1980 of the Subordinate Judge, 1st Glass) Delhi whereby he dismissed the petitioner's application under Order 9 rule 7 of the Code on the ground that the application was barred by time. The brief facts are as follows:-

(2) The plaintiff-respondent No. 1 filed a suit for injunction against the petitioner D.D.A. The summons of the suit was served on the petitioner for 30th April, 1979 but no body was present and therefore it was proceeded ex parte. The trial court adjourned the suit to 16th August, 1979 for recording ex parte evidence. The petitioner made an application under Order 9 rule 7 of the Code on 16th August, 1979 before the trial court alleging that Mr. K.P. Sharma, Advocate was the counsel for the Delhi Development Authority who was engaged in the case and as he was busy in his personal matter, he could not attend the case at the time when it was called for hearing, that at about 10.55 A.M. when the counsel for the petitioner attended the court he came to know that the petitioner had been proceeded ex parte and the date fixed was 16th August, 1979. The application was supported by the affidavit of Shri K.P. Sharma, Advocate counsel for the D.D.A. This application was contested by the plaintiff. The trial court by the impugned order held that the application was made after the lapse of 30 days from the date of the order proceeding ex parte and therefore, dismissed the application. The order proceeding ex parte passed on 30th April, 1979 and the matter was adjourned to 16th August, 1979. Order 9 rule 7 of the Code reads as under:-

'WHERE the court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise be heard in answer to the suit as if he had appeared on the day fixed for his appearance.'

(3) Under the Limitation Act no period is prescribed for filing an application for setting aside the order proceeding ex parte. Under rule 7 of Order 9 of the Code the defendant is allowed to file an application at or before the next date of hearing and if he assigns good cause for his non-appearance on the previous date of hearing the court may set aside the order proceeding ex parte. The application by the petitioner-defendant under Order 9 rule 7 was made on the next date of hearing i.e. 16th August, 1979. Thus it is clear that the defendant-petitioner filed the application in accordance with Order 9 rule 7 of the Code. It must therefore be held that the application was filed in accordance with law. There is no rule that an

application under Order 9 rule 7 is to be filed within 30 days from the date of the order proceeding ex-parte. The next question is whether there was good cause for the absence of the petitioner-defendant on 30th April, 1979 before the trial court. Counsel for the D.D.A. Mr. K.P. Sharma filed his own affidavit that on 30th April, 1979 he was busy in his personal matter and thereforee he could not attend the court at the time when the suit was called by the court. He further states that he reached the court at 10.55 A.M. and came to know that the ex parte proceedings have been ordered against the petitioner-defendant. There is good cause for the absence of the counsel on 30.4.1979. The order dated 30th April, 1979 proceeding ex parte against the petitioner defendant is thereforee set aside and the petitioner-defendant is allowed to appear and contest the suit. The petitioner may now file the written statement on the next date of hearing before the trial court. The petitioner is directed to appear before the trial court on 13th October, 1981. No order as to costs.

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