

Karamjit Singh Vs. Mangli Devi

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Court : Delhi

Decided On : May-08-1996

Reported in : 63(1996)DLT44

Judge : J.K. Mehra, J.

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

Appeal No. : Civil Revision Appeal No. 835 of 1995 and Civil Miscellaneous Appeal No. 1785 of 1995

Appellant : Karamjit Singh

Respondent : Mangli Devi

Advocate for Pet/Ap. : Keshav Dayal,; R.R. Singh,; H.N. Chaudhary and;

Judgement :

J.K. Mehra, J.

(1) I have heard the parties. The petitioner was served with summons in this case for 10th March, 1992. On that date neither the Presiding Officer, nor any of the parties were present and the following order was passed :

'Present: Learned P.O. is on leave. As per order of Learned P.O. the case is adjourned to 21.5.1992 for F.P. sd/- Reader'

(2) The matter thereafter came up on 21st May, 1992 when the Arc was present and the petitioner was represented by his Counsel, but no one appeared for the respondent. Admittedly no notice had been served on the petitioner for 21st May, 1992 and no order was passed by the Court on 10th March, 1992. It is settled law that the Reader of the Court has no authority unless specifically authorised by Presiding Officer to fix the case for any particular purpose except to inform the parties of the next date for proper proceedings. No such authority existed in favor of the Reader in the present case. Notwithstanding this position the Trial Court proceeded against the petitioners ex-parte on 21st May, 1992 and directed the case to be put up for ex-parte evidence on 9th November, 1992. Prior to this I am informed that the respondents who are the petitioners before the Trial Court had initially furnished incorrect address of the petitioner and for that reason no notice could be served on him for a considerable period. It was only subsequently that correct address was furnished and the notices were served for 10th March, 1992. The petitioner moved an application on 27th January, 1993 for recalling of the ex-parte order. A reading of the order of the Trial Court shows that he has used the expressions 'good cause' and 'sufficient cause' inter-changeably treating the same to be carrying the same meaning which in fact is not correct in law. What is required under Order 9, Rule 7 is for the applicant to show a 'good cause' for nonappearance and not 'sufficient cause' which is the requirement in the cases covered under Order 9, Rule 13. Furthermore, the Trial Court has not at all adverted to the question that for 21st May, 1992 the petitioner had not been served with any notice. The Trial Court has also not cared to find that Mr. Dhirender Singh, Advocate happens to be Junior of Mr. K.D. Kaushal, Advocate which fact has been stated and not disputed before me at the Bar. It has been pointed out further that the Trial Court and the Appellate Court have merely surmised that the petitioner has been watching the proceedings from outside and has not attached any importance to the Lawyer's affidavit and the Explanation offered in the application. Both the Courts below appeared to have been impressed by the time lost since the institution of the petition. That I am afraid could not be a consideration for declining the application when a good cause is shown in the application under Order 9, Rule 7. In this connection a ruling of this Court in the case of Savitri Devi v. Puran Chand, reported at 1978 Rlr 350 and in

the case of Shravan Kumar v. Shyam Mangla, reported as 1990 Rcr Vol. I page 72 be referred to.

(3) Mr. Choudhary has very strongly placed lot of stress on his preliminary objection about the maintainability of a revision petition or a petition under Article 227 of the Constitution and has said that the purpose of amendment of the Rent Control Act in eliminating Section 39 would stand frustrated if this Court was to interfere in a matter after the first Appellate Court has already applied its mind and both Courts have taken concurrent view of the matter. I am unable to subscribe to this view because firstly this question relates to procedure. The procedure as available under Code of Civil Procedure has been made applicable to the proceedings under the Delhi Rent Control Act by virtue of Rule 23 of Delhi Rent Control Rules. The rules of procedure including provisions such as Section 115 Civil Procedure Code . or even the constitutional powers under Article 227 are available to this Court, inter alia, for advancing the cause of justice and preventing injustice. Every procedure is meant to be hand maiden of justice and cannot be used to scuttle the cause of justice. There may be some substance in the argument of the proceedings getting delayed, but for delay the opposite party could be compensated with costs which remedies to some extent the melody. In the present case, I am satisfied that the petitioner had shown a good cause for his non appearance and that the Rent Controller had erred firstly in proceeding ex-parte on 21st May, 1992 and thereafter in not entertaining the application under Order 9, Rule 7. Even assuming that he could proceed ex-parte on 21st May, 1992 such order could be recalled on the respondent entering appearance and showing good cause for his non-appearance. In the light of this, this revision petition is accepted subject to the following conditions:

(i) that the petitioner shall pay to the respondent Rs. 5000.00 as costs; and (ii) that the petitioner shall file his written statement within two weeks from today with advance copy to Counsel for the respondent herein.

(4) The parties are directed to appear before the Trial Court on 22nd May, 1996. It is made clear that in case any of the aforesaid conditions are to be complied with by 22nd May, 1996.

