

**Subhash Kumar Vs. Delhi Development Authority**

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**Court :** Delhi

**Decided On :** Mar-22-1999

**Reported in :** 1999IIAD(Delhi)817; 1999(49)DRJ447

**Judge :** DR. M.K. Sharma, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 7; [Limitation Act, 1963](#)  
- Sections 5

**Appeal No. :** I.A. 3055/1996 & 3504/1996 In S.No. 1603/1985

**Appellant :** Subhash Kumar

**Respondent :** Delhi Development Authority

**Advocate for Def. :** Ms. Mukta Sharma, Adv.

**Advocate for Pet/Ap. :** Mr. K.T. Anantharaman, Adv

**Judgement :**

ORDER

**DR. M.K. Sharma, J.**

1. By this order I propose to dispose of the application registered as I.A. No.3055/1996 filed by the defendant under Order 9 Rule 7 of the Code of Civil Procedure as also I.A. 3504/1996 filed by the defendant under section 5 of the

Limitation Act.

2. The plaintiff instituted a suit against the defendant for recovery of a sum of Rs.1.34 lakhs with interest contending inter alias that the aforesaid amount was collected by the defendant from the plaintiff as transfer limit without any authority of law. The defendant contested the suit by filing written statement contending inter alias that such a transfer limit was permissible and legal. In the suit 10 issues were framed by this court and the suit was thereafter listed for trial. On 1.5.1992 statement of PW1 was recorded in presence of counsel for both the parties. However, on the subsequent date of trial i.e. on 26.7.1993 three witnesses on behalf of the plaintiff were present, but as the counsel for the defendant was not present the trial was adjourned till the next date. However, the counsel for the defendant was also not present on the next date but the court recorded the evidence of the witnesses present. On 7.4.1994 also none appeared on behalf of the defendant and accordingly the defendant was proceeded ex parte. On 14.9.1994, counsel for defendant No.1 appeared before the Joint Registrar and stated that an application for setting aside the ex parte order would be moved. However, no such application for setting aside ex parte order came to be filed and accordingly on 9.11.1994 this court accepted the request of the counsel for the plaintiff that evidence of the last witness be filed by way of affidavit. On 12.1.1996 counsel for the defendant appeared in the suit and requested for time to enable the defendant to file an application under Order 9 Rule 7 CPC. Subsequent thereto the aforesaid applications under Order 9 Rule 7 of the Code of Civil Procedure and under Section 5 of the Limitation Act were filed, on which I heard the learned counsel appearing for the parties.

3. Facts narrated above clearly indicate that although an order was passed on 7.4.1994 for proceeding against the defendant ex parte, no application was filed before this court till 25th of March 1996. It is stated that the delay in filing the application was because the earlier application filed by the defendant sometime in the month of October, 1994 could not be traced out in the Registry. Additional ground taken for explaining the delay in filing the present application is that there was change of counsel and misplacement of file. The application stated to have been filed by the defendant on 7.10.1994 is not available on record. Even

assuming that the said application was filed in the Registry the same was also barred by time, and no application under Section 5 of the Limitation Act was filed. The fresh applications in the nature of the present applications came to be filed after expiry of about 1-1/2 years there from. Ms. Indermeet Kaur appeared on behalf of the defendant before the Registrar on 14.9.1994 and stated that she would be moving the application for setting aside ex parte order. No such application appears on record. On 9.11.1994 this court recorded that no application for setting aside ex parte order was filed. On 12.1.1996 the counsel appeared in the court and stated that an application under Order 9 Rule 7 of the Code of Civil Procedure would be filed and time was sought for the said purpose. The said application also came to be filed only on 26.3.1996.

4. On going through the entire facts and circumstances of the case and the pleadings of the parties, I am of the considered opinion that there is total negligence and/or laches on the part of the defendant in the present case. The defendant is apparently not vigilant nor did it take any steps for getting the order for proceeding the suit ex parte as against the defendant set aside at the earliest. No cogent Explanationn has been given by the defendant for his inability to file the present applications earlier than the date they were filed. I am satisfied that the defendant has not been able to make out a case of sufficient cause for explaining the delay in filing the application under Section 5 of the Limitation Act. The application, therefore, stands dismissed. Consequently the application under Order 9 Rule 7 of the Code of Civil Procedure also stands dismissed.

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