

Prabhu Lal Vs. Lal Singh

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Court : Rajasthan

Decided On : May-16-2000

Reported in : 2000(3)WLC732; 2000(3)WLN439

Judge : N. P. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 13

Appeal No. : S. B. Civil Revision Petition No. 915 of 1998

Appellant : Prabhu Lal

Respondent : Lal Singh

Advocate for Def. : Prakash Tatia, Adv.

Advocate for Pet/Ap. : H. R. Panwar, Adv.

Judgement :

ORDER

Gupta, J.

(1). The matter comes up for consideration of stay petition. However, with consent of the learned counsel for the parties, the matter is finally heard.

(2). The plaintiff-non-petitioner had filed a suit for recovery of Rs. 11,700/- on the basis of a promissory note dated 15.7.90. The suit was filed in 1993. On 11.7.94,

the learned counsel for the defendant-petitioner pleaded no instruction. Consequently, the suit proceeded ex parte and vide judgment and decree dated 6.5.96, a decree for a sum of Rs. 11,700/- alongwith pendente lite interest and future interest @ 18% was passed with costs. Thereafter, on 22.1.96, the present application was filed by the petitioner under Order 9 Rule 13 for setting aside the said ex parte decree which application has been dismissed by the impugned order.

(3). The contention of the learned counsel for the petitioner is that after receipt of the summons, the defendant had engaged the counsel and since he carries on the business of road transport, most of the time he remains out side the town in connection with his business and his counsel pleaded no instruction without informing him, and he had filed the application for setting aside the ex parte decree and immediately on coming to know of it. It is contended that in view of the judgment of Hon'ble the Supreme Court reported in 1993 SC 1182 (1) and 1998(2) SCC 206 (2), so also in view of the judgment of this court reported in 1998 RLW 107 (3), before pleading no instruction, the learned counsel should have informed the petitioner and since he was not informed, the petitioner has been deprived of the opportunity of putting forward his case.

(4). As against this, learned counsel for the plaintiff-non- petitioner contends that the rule laid down in the above judgments cited on behalf of the defendant-petitioner is not a Universal nor an absolute rule to be applied as a straight jacket formula indiscriminately in each and every case, wherever, the counsel for any litigant pleads no instructions. Merely by engaging a counsel, the litigant does not acquire an absolute right to enjoy complete holiday in the matter of taking care of litigation and simply waiting for a call notice from the lawyer to take steps in the litigation. Inherently in the nature of things, the litigant is supposed to keep track of the litigation so as to take requisite steps, according to the learned counsel, it was way back on 11.7.94 that the suit was ordered to proceed ex parte while the ex parte decree was passed on 6.5.96, the petitioner has not shown that during all this period why he did not at all contact his counsel. The petitioner was supposed to know that in any case at least a written statement had to be filed by the defendant and even for that the defendant did not care to contact his counsel.

(5). Having considered the rival submissions and having perused the judgments cited on behalf of the petitioner, the ratio laid down in all those judgments is required to be respected and followed. However, the petitioner is not entitled to claim anything beyond the ratio of those judgments and then the ratio is to be applied taking into account all the attending circumstances of the litigation in each individual case. There may be circumstances where after engaging the lawyer, the litigant may not be required to take any effective step and may well rest contented awaiting information from the lawyer, as against which there may be cases and cases where the litigant may be required to be vigilant and attendant with day do day progress of the litigation. In the second category of cases, it cannot be expected of a lawyer, on the other hand, to every time to be on his toes to rush after the litigant, and only after failing to contact, to plead no instruction. Be that as it may.

(6). In the totality of the circumstances of the present case, I feel inclined to set aside the ex parte decree adopting a little liberal attitude in the matter of following the judgments of the Supreme Court cited on behalf of the learned counsel for the petitioner. But at the same time, in the circumstances of the case, such ex parte decree is required to be set aside on terms as clearly contemplated by Order 9 Rule 13, which terms can include the terms as to costs, payment into court, or otherwise as is thought fit. In the present case, in my view, therefore, the ex parte decree is required to be set aside on the condition of the defendant depositing a sum of Rs. 15,000/- in the learned trial court within two months from today, the amount shall not be paid to the plaintiff till disposal of the suit and shall be appropriately invested by the learned trial court in some Scheduled Bank so as to yield return. On the amount being so deposited, the learned trial court shall receive the written statement of the petitioner and thereafter, try the suit most expeditiously and conclude the trial as far as possible within a period of one year from the date of depositing the amount. In case the petitioner fails to deposit the amount as above, the ex parte decree shall stand and the revision shall be deemed to be dismissed. If the amount is deposited within two months, the parties shall appear before the learned trial court on 17th July, 2000.

The revision is accordingly allowed as above.

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