

Simplex Projects Limited Vs. Jai Bansal

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Court : Delhi

Decided On : May-27-2013

Judge : V.K.Shali

Appellant : Simplex Projects Limited

Respondent : Jai Bansal

Advocate for Def. : Mr. Ajay Kumar Porwal

Advocate for Pet/Ap. : Mr. S.D. Singh

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + F.A.O. No.424 of 2012 & C.M. No.17455 of 2012 (for stay) Decided on :

27. h May, 2013 SIMPLEX PROJECTS LIMITED Appellant Through: Mr. S.D. Singh, Advocate. Versus JAI BANSAL Through: Respondent Mr. Ajay Kumar Porwal, Advocate with respondent in person. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

1. This is an appeal filed by the appellant under Order 43 Rule 1 (d) CPC against the order dated 21.9.2012 passed by the learned Additional District Judge in C.S. No.420/2010 dismissing the application of the defendant/appellant herein under Order IX Rule 13 CPC on the ground that the appellant was not able to show sufficient cause for setting the ex parte judgment and decree dated 8.2.2012.

2. I have heard the learned counsel for the defendant/appellant who has vehemently contended that the learned trial court has fallen into an error by not allowing the application of the appellant for setting aside the ex parte decree as he was able to show sufficient cause. The learned counsel for the appellant has also relied upon two judgments of the Apex Court passed in case titled Tea Auction Ltd. vs. Grace Hill Tea Industry & Another; (2006) 12 SCC 10. and G.P. Srivastava vs. R.K. Raizada & Others; (2000) 3 SCC 54.

3. So far as the learned counsel for the plaintiff/respondent herein is concerned, he has contested the submissions made by the learned counsel for the defendant/appellant and contended that the appellant has not only tried to delay the disposal of the suit by not only absenting but has also failed to show sufficient cause for its non-appearance despite service. It has also been stated that after the ex parte decree was passed on 8.2.2012, the plaintiff/respondent had served a caveat on 19.3.2012 to the defendant/appellant and despite this, the appellant did not take steps to participate in the proceedings and had belatedly filed an application for setting aside ex parte decree by contending that they derived the knowledge about the ex parte decree having been passed against them only when the order of attachment was passed. It has further been stated that the ex parte decree has since been executed and the decretal amount realized, therefore, there is nothing which deserves to be tried by the trial court after setting aside the ex parte decree.

4. I have carefully considered the rival contentions and have gone through the impugned order. The plaintiff/respondent herein filed a suit for recovery of `5,97,660/- along with pendent lite and future interest against the defendant/appellant, which is a company. The case of the plaintiff/respondent was that he had executed the work order dated 15.1.2010 for supply of skilled and unskilled workers to the defendant company for construction work at Talkatora Stadium, New Delhi and the defendant/appellant had paid only part of the amount of the bill raised by him while as there was an outstanding of nearly `5,97,660/- on account of the principal as well as the interest payable by the defendant/appellant. It was alleged that despite repeated requests to clear the outstanding amount, the defendant/appellant had failed, as a consequence of which, the

plaintiff/respondent was constrained to file the suit for recovery.

5. The defendant/appellant despite service, failed to appear as a consequence of which, they were proceeded ex parte and an ex parte decree for the suit amount was passed against the defendant/appellant on 8.2.2012.

6. The defendant/appellant filed an application for setting aside the ex parte decree on 18.8.2012. The reason which was given by the appellant in the application for setting aside ex parte decree was that the summons of the suit were received by one girl by the name of Ms. Shalini Chakraborty working in the office of the appellant, who was a mere trainee for a few days only and she was neither authorized to accept the notice nor did she bring it to the notice of the company as a consequence of which the proceedings went unattended. It was stated that the plaintiff/respondent had not adopted other modes of effecting the service on the defendant/appellant as a consequence of which the defendant/appellant was prevented by sufficient cause from contesting the matter.

7. The plaintiff/respondent had contested the claim and stated that not only the defendant/appellant had been served but they have deliberately kept away from the proceedings only with a view to delay the disposal of the suit. It was also stated that after the decree and judgment was passed, the appellant was also served with a copy of the caveat on 19.3.2012 so as to make them aware about the pronouncement of the ex parte decree.

8. I have carefully considered the submissions. The explanation which has been given by the appellants for their non-appearance is that the summons were served on one Shalini Chakraborty, who was working as a trainee in the company. The trial court had asked the defendant/appellant produce company to the record regarding appointment of Shalini Chakraborty as a trainee, whereupon a letter dated 23.7.2010 was filed to the effect that she had proceeded on some vocational training from 1.8.2010 to 30.9.2010. The trial court examined the summons which had not only the signatures of Shalini Chakraborty but also stamp of the appellant company and, therefore, it did not believe the version of the appellant. The judgments which were cited by the appellant were also distinguished by the trial court especially the one passed in G.P. Srivastavas case (supra).

9. Feeling aggrieved, the appellant filed the present appeal. I have gone through the record. There is no dispute about the fact that the appellant had been served. Even if we accept Shalini Chakraborty to be trainee, then the trainee would, at the first instance, not accept the summons which are received from the court, without the authority or without bringing it to the knowledge of the superior officials. Moreover, the summons which have been received, bears the stamp of the appellant company. The appellant company is a big construction company and obviously, it must be having a receipt and a dispatch section where the letters or summons or other documents are received and dispatched. This register of receipt and dispatch has not been proved or the relevant entry around the day when the service was purportedly effected, has not been shown by the appellant and prima facie I tend to agree with the finding returned by the trial court and do not find any fault on this count. The appellant also seemed to be reluctant to produce the record which was sought by the trial court. They took flimsy pretext that appointment letter of Shalini Chakraborty could not be produced as she proceeded on leave. This clearly shows that the explanation given for the absence by the appellant is not bona fide rather it is mala fide. Moreover, the decree has already been realized, therefore, nothing survives. In my opinion, it will be a retrograde step to reverse the finding and put the clock back and to decide the suit on merit which will further take a decade or so. F.A.O. No.424/2012 the totality of facts, I feel that there is nothing illegal or improper in the exercise of discretion by the trial court and accordingly the appeal is dismissed. V.K. SHALI, J.

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