(1986) 07 CAL CK 0031

Calcutta High Court

Case No: None

Life Insurance Corporation of India		APPELLANT
	Vs	
Anjan Kumar Arora and Others		RESPONDENT

Date of Decision: July 16, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9

Citation: 91 CWN 243

Hon'ble Judges: S.K. Mookherjee, J; Anil Kumar Sen, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Anil Kumar Sen, J.

The respondents are not appearing to contest this appeal though they have been intimated that the appeal itself would be taken up for hearing with all other formalities. The appellant is the life Insurance Corporation of India. The appeal is directed against an order dated May 19, 1986, passed by a learned single Judge of this Court in Suit No. 111 of 1974, by the order imposed the learned Judge has allowed an application for restoration of the suit by setting aside an ex parte decree subject, however to some conditions. The defendant/appellant although they had succeeded in the application for restoration, feels aggrieved by the conditions imposed and as such has preferred the present appeal.

2. The three respondents instituted the aforesaid suit for recovery of a sum of Rs. 65,000/ - on declaration that a Policy of Insurance dated December 26, 1967, was subsisting and was in force at the time of the death of Sambhunath Arora on January 29, 1969, and for consequential reliefs.

3. This suit was being contested by the defendant/appellant on the plea that the Policy in question having lapsed for non-payment of premium other than the first

premium, nothing was payable on the policy as claimed.

4. This suit after lapse of several years was placed for hearing before the learned trial Judge on March 7, 1986. On that date on the prayer of the plaintiff the suit was adjourned for a week and was due to appear on March 14, 1986.

5. Admittedly on the said date the suit did not appear on the Cause List of the learned Trial Judge. It, however, appeared on March 17, 1986, but under a wrong heading and with a wrong number which totally misguided the Advocate on Record of the defendant/appellant resulting in he being unable to keep track of the same. In that circumstance, the suit was taken up for ex parte hearing on March 17, 1986 although, according to the defendant/ appellant even on that date their Assistant attended the Court and was informed by the Advocate on Record that the matter was not in the Cause List. That was the ground which was pleaded in support of the application for setting aside the ex parte decree passed on that date and directing restoration of the suit.

6. It appears that the learned Judge was satisfied that the ground made out was good ground for non-appearance on the day when the suit was decree ex parte against the defendant/appellant. He, therefore, allowed the prayer for restoration of the suit by setting aside the ex parte decree. But he imposed conditions. The first condition was that the defendant/appellant was to deposit a sum of Rs. 50,000/ - with the Advocate on Record of the defendant. On such deposit being made the Advocate on Record for the defendant was directed to invest the said sum in Short Term Fixed Deposit and to disburse from time to time the interest in favour of the plaintiffs. The second condition imposed was payment of a sum of Rs. 1020/ - to "Ram Krishna Mission and Ram Krishna Math, Balur" within a week."

7. Counsel appearing on behalf of the appellant has contended that neither of the conditions thus imposed by the learned Judge could have been validly imposed as a condition for allowing the defendant''s application for restoration of the suit and setting aside the ex parte decree. According to the Learned Counsel the defendant had made out a strong defence that nothing whatsoever would be payable in respect of the claim put forward and though the suit had been decree ex parte it was so done due to no real fault on the part of the defendant and in circumstances entirely beyond their control. The ground for non-appearance as made out has been upheld as sufficient ground by the learned Judge when he allowed the application and in the facts and circumstances there was no justiciable reasons to impose a precondition that a sum of Rs. 50,000/ - out of the claim of Rs. 67,000/ - is to be deposited with the Advocate on Record even at this stage and that interest derived therefrom should be paid to the plaintiff. Secondly, it has been contended by the counsel for the appellant that though it would have been within the authority of the learned Judge to direct payment of costs incurred by the plaintiff/respondent he had no authority to impose a penal clause by directing payment of a sum of Rs. 1020/ - to the ''Ram Krishna Mission and Ram Krishna Math, Balur."

8. On a careful consideration of the points thus raised by the counsel for the appellant we find much substance in them. While allowing an application for restoration the Court can certainly impose conditions and they are at times done. But Such conditions must be reasonable and must have some justification having regard to the attending circumstances. Such conditions cannot be imposed just arbitrarily. Here in the present case neither of the conditions imposed by the learned Judge can be justified as those imposed in proper exercise of judicial discretion. The defendant/petitioner in the proceeding for restoration is a statutory Corporation so that there is no reasonable ground for apprehension that the plaintiffs'' claim if it succeeds is likely to be delayed or defeated; such a defendant has put forward a reasonable defence; though there was delay in the carriage of proceeding, it was not due to any laches on the part of the defendant defendant''s non appearance resulting in the ex parte decree was accidental and due to circumstances not within their control. In those circumstances, it was not just and proper to upon the defendant to call deposit the major part of the plaintiff''s claim. It is still more difficult to support the Judge''s direction for payment of the interest accruing on the deposit to the plaintiffs. There can be no reason for allowing the plaintiffs to enjoy the income out of money which is yet to be decreed, if at all, in favour of the plaintiffs.

9. So far as the other condition is concerned, we think the same is equally unsustainable. Under our procedural laws the court can, in allowing applications of the nature allowed by the learned Judge, award sufficient costs in favour of the other party to compensate him for the costs incurred by him at the ex parte hearing which is being reopened. But the court cannot make charity in favour of charitable institutions at the cost of litigants. We are of the view that there is no legal sanction for a direction as made by the learned Judge in this regard nor can such a direction be upheld as one made in proper exercise of his discretion. Such an innovation, in our opinion, is not within the scheme or sanction of law governing disposal of applications under Order 9 of the Code or under provisions parallel thereto.

10. In the result the appeal succeeds and is allowed. In modification of the order passed by the learned trial Judge we allow the application for restoration made by the defendant/appellant and we set aside the ex parte decree dated March 17, 1986, passed in the above suit and direct the suit to be restored for retrial. The defendant/appellant is directed to pay a sum of Rs. 500/ - towards costs to the plaintiff, all directions given by the learned Judge contrary hereto, are set aside.

11. Let the operative portion of this order duly countersigned by the Court Officer be handed over to the counsel for the appellant.

All parties to act on a signed copy of the operative portion of this order subject to the usual undertaking''

S.K. Mookherjee, J.

12. I agree.