

(2013) 05 DEL CK 0427

Delhi High Court

Case No: FAO No. 246 of 2013 CM No. 8925 of 2013

Triveni Verma (Smt.)

APPELLANT

Vs

Sh. Vikas Girdhar

RESPONDENT

Date of Decision: May 29, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 151
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2013) 5 AD 743

Hon'ble Judges: V.K. Shali, J

Bench: Single Bench

Advocate: R.K. Tarun, for the Appellant;

Final Decision: Dismissed

Judgement

V.K. Shali, J.

This is an appeal filed by the appellant against the order dated 26.3.2013 passed by the learned ADJ by virtue of which the application of the appellant under order IX Rule 13 read with Section 151 CPC was dismissed on the ground that there is no "sufficient cause" shown for setting aside the decree against the ex parte order. Briefly stated the facts leading to the filing of the present appeal are that the respondent/Vikas Girdhar filed a suit bearing No. 242/2009 for specific performance of agreement to sell dated 29.8.2008 purported to have been executed by the present appellant. The respondent had also prayed for possession and perpetual injunction in respect of property bearing no. 5596, Gali No. 0 & 1, New Chandrawal, Subzi Mandi, Delhi.

2. The aforesaid suit came up for hearing before the trial court on 18.8.2009 and the appellant/defendant was directed to be served by ordinary process as well as registered post for 18.9.2009. The acknowledgement card, though unsigned, was received back. Since the letter was not received back, it was assumed that the

appellant/defendant has been served. The ordinary process was served on the appellant/defendant personally on 26.8.2009.

3. Despite service, the appellant/defendant failed to appear before the Court on 18.9.2009 and the matter was posted for her appearance on 21.10.2009. On 21.10.2009, the Court was on leave and the matter was adjourned to 26.11.2009. On 26.11.2009 again the appellant/defendant failed to appear and she was accordingly proceeded ex parte. The Court recorded the ex parte evidence and allowed the suit vide judgment and decree on 22.1.2010.

4. The appellant/defendant filed an application for setting aside the ex parte judgment and decree on 09.12.2011. The said application was dismissed by the trial court on the ground that according to Article 123, Schedule I of the Limitation Act, the application for setting aside of ex parte decree has to be filed within 30 days from the date of decree or where the summons was not duly served within 30 days from the date when the applicant had got the knowledge of the decree. In the instant case, since the summons were duly served on the appellant/defendant, the Court assumed that the application under order IX Rule 13 CPC had to be filed within 30 days from the date of passing of the decree which was expired on 21.2.2010. While as the application was preferred on 9.12.2011 i.e. after expiry of more than 21 months delay. Further, this application was not accompanied by any application seeking condonation of delay explaining any reason which may constitute "sufficient cause" for filing this belated application for setting aside ex parte decree.

5. I have heard the learned counsel for the appellant.

6. The contention of the learned counsel for the appellant is that the appellant had taken a loan of Rs. 1,50,000/- from the plaintiff/respondent in July, 2009. At the time of taking the loan, the respondent/plaintiff had taken the sale deed in respect of the property in question and obtained five blank cheques. In respect of these blanks cheques, the respondent had already filed a complaint u/s 138 of Negotiable Instruments Act. It has been stated that the respondent/plaintiff was intimated about the service of summons by the appellant/defendant whereupon he had stated that she need not to worry and he will take care of the case. It is stated that the plaintiff/respondent was the friend of a brother of the appellant/defendant for the last 60 days and therefore, she believed his statement. On the basis of this the application for setting aside the ex parte decree was filed.

7. In the first instance, this is not a case where the appellant/defendant has not been served. The appellant/defendant was served and then she has to explain the reasons which constitutes "sufficient cause" which prevented her from appearance before the Court resulting in passing of a decree against him. The appellant states that she was prevented by the fact that she had approached the respondent/plaintiff who assured that she should not bother about the case. It

sounds very absurd that the appellant/defendant would approach the person who has filed the suit against her for taking care of her suit and she believed his statement. In any case, Article 123 of the Limitation Act has very clearly laid down the period of limitation within which an application has to be filed is 30 days when the defendant has been served. In the instant case, the defendant has been served and therefore, the application for setting aside the ex parte decree is to be passed within 30 days from the date of passing of the decree while as the application is filed after expiry of more than 21 months. No explanation whatsoever has been furnished regarding this. As a matter of fact, the appellant has not only slept over the matter after receiving the summons but has not even cared to file any application seeking condonation of delay which clearly shows the gross negligence on his part in pursuing the matter. The law of limitation is based on the fundamental principle that the law helps those who are vigilance about their rights. Keeping in view the totality of circumstances, I am of the view that there is no illegality or impropriety in the order passed by the learned trial court in rejecting the application of the appellant and accordingly the appeal is dismissed.