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Neeraj Bansal Vs Pawan Gupta

FAO 129 of 2011

Court: Delhi High Court

Date of Decision: Feb. 28, 2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 9, 151#Limitation Act, 1963 â€" Section 5

Hon'ble Judges: Veena Birbal, J

Bench: Single Bench

Advocate: Sarfaraz Khan, for the Appellant; K.K. Gautam, for the Respondent

Final Decision: Allowed

Judgement

Veena Birbal, J.
By way of present appeal, the appellant has challenged order dated 08.12.2010 by which the application filed by the

appellant under Order 9 Rule 9 read with Section 151 CPC for restoring the suit alongwith application u/s 5 of the Limitation Act for condonation

of delay in filing the application for restoration of suit has been dismissed. Briefly, the factual background of the case is as under:-

A suit for recovery was filed by the appellant/plaintiff before the learned trial court claiming recovery of Rs.14,02,000/-, which was dismissed in

default vide order dated 21.10.2008. As per the appellant, he came to know only on 08.4.2010 from the respondent/ defendant in the Rohini

Courts that the suit has been dismissed in default on the aforesaid date. Thereupon, necessary steps were taken by the appellants/plaintiff and an

application under Order 9 Rule 9 CPC read with Section 151 CPC along with application u/s 5 of Limitation Act was moved for setting aside the

order of the dismissal dated 21.10.2008. The said applications have been dismissed by the learned Additional District Judge vide impugned order

dated 08.12.2010.

2. The stand of the appellant is that he was advised by his counsel that it was a civil matter as such he was not required to appear in the matter and

for the said reason, the appellant was not personally appearing in the case. It is his further stand that he has been asking his previous lawyer about

the progress in the matter who had been informing the dates fixed in the case and he had also told the appellant not to worry as he was pursuing his

case. It is submitted that it was only on 08.04.2010 that the appellant came to know from the respondent/defendant at the Rohini Courts about the

dismissal of the suit in default. The appellant has also given the details of the case which he had gone to attend at Rohini Courts.

It is further contended that due to the lapse of his previous counsel, the appellant should not suffer. It is further submitted that the appellant/plaintiff

has a very good case on merits and there is likelihood of succeeding in the suit. It is further submitted that no prejudice shall be caused to the

respondent if impugned order is set aside and the respondent will not suffer any loss or injury.

3. The counsel for respondent is also present. The stand of the respondent is that the appellant/plaintiff was well aware of the proceedings before

the trial court and he intentionally and deliberately did not appear on the dates fixed before the trial court. It is further submitted that the delay had

not been properly explained by the plaintiff and there is no sufficient cause for restoration of the suit below. However, the learned counsel for the

respondent after some arguments has submitted that for effective adjudication of the matter on merits, he has no objection if the impugned order is

set aside, subject to payment of costs.

4. The application under Order 9 Rule 9 read with Section 151 CPC is supported with affidavit of the appellant. Even in the present appeal, same

reasoning for non-appearance and as to how the appellant has come to know is reiterated. The suit filed by the appellant before the trial court is a

recovery suit. There is no reason to disbelieve the affidavit filed by the appellant before the learned trial court as well as this court. The appellant

has been able to make out a sufficient cause for non-appearance in the matter and for not filing the application for restoration of suit within time.

The lapse on the part of appellant is unintentional and there is nothing on record to show that the appellant/plaintiff was unnecessarily delaying the

matter. There is nothing on record to doubt the bonafide of the appellant. The pleadings in the suit below are already complete and the case is at

the stage of plaintiff''s evidence. No prejudice shall be caused to the respondent if impugned order is set aside as respondent would get full

opportunity to defend his case. In the interest of justice and for effective adjudication of the suit on merits as well as no objection given by the

counsel for respondent/defendant, the appeal is allowed. The impugned orders dated 08.12.2010 and 21.10.2008 are set aside, subject to

payment of costs of Rs.7000/- to the respondent.

The parties to appear before the concerned trial court on 12th April, 2012. On the said date, the cost will be paid to the respondent/defendant and

thereafter the matter shall proceed in accordance with law.

Appeal stands allowed.