

(2018) 10 RAJ CK 0063

Rajasthan High Court

Case No: Civil Misc. Appeal No. 1811 of 2015

Ralson Industries Ltd
@APPELLANT@Hash Arun
Pulverizing Industries

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 24, 2018

Acts Referred:

- Limitation Act, 1963 - Section 5
- Code of Civil Procedure, 1908 - Order 5 Rule 20, Order 9 Rule 7, Order 9 Rule 13

Hon'ble Judges: P.K. Lohra, J

Bench: Single Bench

Advocate: Sheetal Kumbhat, S.L. Jain

Final Decision: Allowed

Judgement

Appellant-defendant has preferred this appeal to challenge order dated 21.07.2015, passed by District Judge, Pratapgarh (for short, the learned Court below), whereby learned Court below has rejected its application under Order 9 Rule 7 and 13 CPC read with Section 5 of the Limitation Act for setting aside ex-parte order and decree.

The bare necessary facts for the purpose of this appeal are that respondent-plaintiff filed a suit for recovery of a sum of Rs.17,81,041/- against appellant and the said suit was decreed ex-parte by learned Court below by its judgment and decree dated 21.03.2013. Before decreeing the suit, due to non-appearance of the appellant, learned Court below proceeded ex-parte against it on 30.05.2012. Having come to know about passing of ex-parte

decree, the appellant made endeavour for setting aside ex-parte order as well as decree by laying requisite application as well as application for condonation of delay. The learned Court below, after considering the application and arguments advanced by the rival parties, declined the prayer of appellant, and consequently, rejected both the applications.

It is argued by learned counsel for the appellant that learned Court below has seriously erred in presuming sufficient service on appellant, which was by way of substituted service, inasmuch as, the newspaper, wherein notice/summons is published, was having no circulation in the area, where office of the appellant is situated. It is also submitted by learned counsel that the grounds set out for condonation of delay were good and sufficient but the learned trial Court has not considered those reasons objectively while declining the prayer of appellant.

Per contra, learned counsel for the respondent has contended that, despite service of notice/summons, appellant did not choose to appear before learned Court below, therefore, the Court initially proceeded ex-parte against it and then passed the ex-parte decree. It is also argued by learned counsel, Mr. Jain, that the reasons spelt out for condonation of delay were not good and sufficient, and therefore, no interference with the impugned order is warranted.

I have bestowed my consideration to the arguments advanced at Bar.

While it is true that under Order 9 Rule 13, as per second proviso, ex-parte decree cannot be set aside merely on the ground of irregularity in service of summons if the Court is satisfied that defendant had notice of the date of hearing and had sufficient time to appear and answer plaintiff's claim, but then in the present case, the mode of service was not a regular one and the service was in fact affected by resorting to substituted service under Order 5 Rule 20 CPC. That apart, it is also an admitted fact that the suit in question was filed by respondent-plaintiff for recovery of a sum of Rs.17,81,041/-.

While considering application of the appellant under Order 9 Rule 7 and 13 CPC as well as under Section 5 of the Limitation Act, the learned Court below has in fact adopted a purely pedantic and idealistic approach rather than a pragmatic posture. Moreover, the words "sufficient cause"

envisaged under Section 5 of the Limitation Act have been construed strictly rather than liberally as intended by the Legislature and various authoritative pronouncements. Normally when technicalities are pitted against substantial justice, Court is required to give precedence to the substantial justice.

Looking to the nature of the suit, Court also feels that the lis is required to be adjudicated after bipartite hearing and taking evidence of the rival parties.

In view thereof, I feel persuaded to interfere with the impugned order, however, the serious lapses on the part of appellant-defendant cannot be totally excused, and therefore, it would be just and prudent to saddle it with some cost for its callousness in contesting the matter.

Accordingly, the impugned order is set aside and the applications laid on behalf of the appellant-defendant are allowed and ex-parte decree is set aside subject to the payment of cost of Rs.10,000/-. The parties with their respective counsels may appear before the learned Court below on 19.11.2018.

The appellant-defendant is directed to pay or deposit the cost on or before 19.11.2018.

The learned Court below is further directed to expedite hearing in the matter and decide the main suit itself after bipartite hearing within a period of nine months thereafter.

It is made clear that if requisite cost is not paid or deposited within the stipulated period, then the instant order shall stand automatically annulled.