

CS DJ 1909/16

MAHINDER SINGH BAKSHI Vs. KULWANT SINGH AND ORS

02.12.2022

Present: Sh. Chirag Alagh-Ld. Counsel for the plaintiff along with the plaintiff.

Sh. Naresh Talwar-Ld. Counsel for the defendants.

Reply has been filed on record by the plaintiff to the application of the defendant u/o IX rule 13 CPC. Copy thereof has been supplied to the ld. counsel for the defendants.

The facts germane to the filing of the application by the defendants u/o IX Rule 13 CPC are that the defendants were proceeded ex-parte and the defence of the defendants was also struck off vide orders dated 07.08.2019 passed by the Ld. predecessor of this court.

Ld. counsel for the defendants in the said application has shifted the onus of non filing of the written statement and for non appearance on 07.08.2019 on his advocates who were changed twice by the defendants/applicants as per the contents of the said application. Ld. counsel for the defendants has vehemently argued that only on 26.09.2022, he was engaged by defendants and after inspection of the file, he came to know that the defendants were proceeded ex-parte on 07.08.2019 and hence, the present application.

In the reply filed by the plaintiff to the above said application, it has been stated that the defendants were required to be vigilant of the proceedings of their case. It has been further argued that the legal assistance cannot be provided to a litigant who is not vigilant of his own case. It has been further stated that the said application filed by the defendants is false and frivolous and it has been prayed that the said

application be dismissed with exemplary costs.

Ld. counsel for the plaintiff has relied upon the ratio of the two judgments titled as Moddus Media Pvt. Ltd. Vs. Scone Exhibition Pvt. Ltd. in RFA no. 497/2017 cited as MANU/DE/1442/2017 passed by the Hon'ble High Court of Delhi and Bakeer Bhai Vs. Yashwant Gupta in F.A.O no. 539/2018 cited as MANU/DE/4428/2018 passed by the Hon'ble High Court of Delhi.

I have carefully gone through the entire material available on record and heard the rival submissions of ld. counsels for both the parties.

Perusal of the record of the case reveals that the defendants appeared before the court in pursuance to the summons issued by the court and the first date of appearance of the defendants before the court was 04.01.2017. Thereafter, the defendants filed an application u/s 8 of the Arbitration & Conciliation Act which was dismissed by the ld. predecessor of this court on 29.09.2018. The matter was fixed for filing of written statement on 12.12.2018. Ordersheet dated 12.12.2018 reflects that on 12.12.2018, Written statement was not filed and the matter was adjourned to 07.08.2019 on which date, none appeared on behalf of the defendant resulting in the impugned orders passed on 07.08.2019 whereby defendants were proceeded ex-parte and the defence of the defendants was struck off.

Ld. counsel for the defendants has argued that the defendants are residents of Muradabad and they were not able to keep track of the case proceedings because their advocate failed to inform them. It is not in dispute that the address of the defendants is of Muradabad as has been mentioned in the memo of parties placed on record by the plaintiff. The judgments which have been relied upon by

the ld. counsel for the plaintiff pertain to the cases wherein ex-parte judgment and decree was passed but the present suit is pending disposal and the same is yet to be concluded. The settled law is that a litigant should not suffer for lapse on account of his advocate.

Keeping in view the entirety of the facts, the submissions as contained in the reply to the application filed by the plaintiff, the present application filed by the defendant is hereby allowed subject to the costs of Rs. 10,000/- to be paid by the defendants to the plaintiff.

The plaintiff shall supply the copy of the entire plaint and that of the documents as well to the ld. counsel for the defendant within seven days from today and thereafter, within a period of one month, defendants shall file the written statement with advance copy thereof to the opposite party.

Replication be filed by the plaintiff with advance copy thereof to the opposite party.

Now to come up for payment of the above mentioned costs by the defendants, completion of the pleadings of the parties, admission/denial of documents and framing of issues on **09.03.2023**.

(Raj Kumar)
ADJ-02/ North/ Rohini Court
Delhi/02.12.2022