

Misc DJ 173/20

MUNICIPAL CORPORATION OF DELHI Vs. B K SAHNI

06.10.2022.

Present: Sh. Nitin Shokeen, Ld. Counsel for plaintiff.
Sh. Abhishek Semwal, Ld. Counsel for defendant

Arguments heard on application U/o IX rule 9 & 4
CPC.

Plaintiff averred that on 10.01.2020, his counsel was not feeling well and he had instructed his clerk to appear before the court and to seek a date on the ground of his illness. However, clerk of counsel for applicant could not appear in time. By the time he reached, the matter got adjourned for 11.03.2020. Clerk of counsel for applicant had inadvertently noted the date as 11.05.2020 instead of 11.03.2020 and on 11.05.2020, when the applicant appeared before the court, he came to know that his suit had already been dismissed. Ld. Counsel for the plaintiff immediately moved the instant application for restoration of the suit. However, non-appearance of applicant/ counsel was neither deliberate nor intentional and happened due to mistake of the counsel.

Ld. Counsel for applicant further submits that there is delay of 158 days in filing the application U/o IX rule 9 & 4 CPC. He further submits that due to the pandemic situation, he could not file the application within time. He prays that the delay of 158 days in filing the application may be condoned.

Considering the pandemic situation, delay of 158 days in filing the application U/o IX Rule 9 & 4 CPC is condoned.

Ld. Counsel for non-applicant submits that applicant's earlier similar application was allowed vide order dated 29.04.2019. Applicant/ plaintiff is not diligent in pursuing the matter.

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In my opinion, a party should not suffer due to the mistake of counsel. The present application U/o IX rule 9 & 4 CPC is allowed, subject to cost of Rs. 10,000/- to be paid to the counsel for the non-applicant/ defendant. The suit is restored to its original number and position.

Arguments heard on application U/o XXII Rule 4 CPC for impleading the LRs of deceased non-applicant B.K. Sahni.

It is averred that non-applicant B.K. Sahni has passed away intestate on 19.01.2021 leaving behind the following three LRs :

- (i) Smt. Ritu Sahni (Wife)
- (ii) Sh. Raghav Sahni (Son)
- (iii) Ms. Geetika Sahni (Daughter)

Ld. Counsel for the applicant submits that he became aware about the death of Late Sh. B.K. Sahni on 21.03.2021, therefore, applicant could not timely file the application U/o XXII rule 4 CPC. He further submits that his application for impleading the LRs of the plaintiff is formal in nature and the same may be allowed.

Ld. Counsel for non-applicant submits that he has no objection if the present application is allowed.

The application is formal in nature and right to sue survives in favour of applicant after the death of defendant B.K. Sahni. In view thereof, application U/o XXII Rule 4 CPC filed by the applicant is allowed.

Amended memo of parties filed. Same is taken on record.

List for arguments on petition U/s 34 of Arbitration and Conciliation Act on 30.11.2022.

(Manish Sharma)
Additional District Judge-01(West)