

MUNISH VERMA Vs. REKHA SHARMA

THROUGH WEBEX VIDEO CONFERENCING.

19.10.2020

File has been taken up today as it could not be earlier taken up due to lockdown on account of Covid-19.

Present: Sh. Vijay Babbar, Ld. counsel for the plaintiff.

Sh. Gaurav Malhotra, Ld. Counsel for the defendant no. 1.

An application under Order 9 Rule 7 CPC filed by defendant no. 1 for setting aside ex-parte order dated 15.07.2010 is pending disposal. Reply has already been filed by the plaintiff through e-mail.

Copy is already supplied to the opposite counsel.

Arguments on the application heard. Put up for orders during the course of the day.

Shivali Sharma

Additional District Judge-03(West)

Tis Hazari Court/19.10.2020

At 12.30 Noon

Present: None.

1. Arguments on the application under Order 9 Rule 7 CPC heard in the morning.

2. Record has been carefully perused.

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3. Perusal of the record shows that defendant no. 1 was duly served in the matter and filed her written statement. Issues were also framed on 28.04.2013 and defendant no. 1 was being represented by counsels Sh. Rakesh Kansal and Ms. Neelam Panchal whose vakalatnama is on record. On 25.01.2019, PW1 was examined in chief and cross examination was deferred, thereafter on 12.04.2019, none appeared on behalf of defendant no. 1 and matter was adjourned. Thereafter on 30.05.2019, it was submitted by counsel for defendant no. 1 that she wants to withdraw the vakalatnama on behalf of defendant no. 1 and letter dated 30.01.2019 has been sent to defendant no. 1 to this effect. Copy of the letter along with postal receipt is placed on record. Ld. Counsel was permitted to withdraw the vakalatnama and a court notice was issued to defendant no. 1. The court notice was served on defendant no. 1 through her son Neeraj on 11.07.2019 but the defendant no. 1 did not appear and accordingly, was proceeded ex- parte vide order dated 15.07.2019. Thereafter, on 19.08.;2019, the attendance of son of defendant no. 1 was recorded and he was informed that defendant no. 1 was already ex-parte vide order dated 15.07.2019. Thereafter, none has appeared on behalf of defendant no. 1 for several dates of hearing.

4. Part final arguments were also heard in the matter.

5. After more than one year, the present counsel Sh. Gaurav Malhotra appeared on behalf of defendant no. 1 on 29.08.2020 and filed the application under consideration.

6. In the application under consideration, the entire blame for non appearance of the defendant no. 1 has been put on her earlier counsel Sh. Rakesh Kansal, Advocate and it is stated that the counsel kept on informing defendant no. 1 that he is appearing in the matter and he will inform her whenever her appearance is required. Despite putting the entire blame on the earlier counsel, defendant no. 1 had not filed any complaint against her earlier counsel. It is alleged that on the misguidance of her earlier counsel Mr. Rakesh Kansal, defendant no. 1 could not diligently pursue her matter and was proceeded ex-parte on 15.07.2019. Hence, the present application is filed.

7. The application is strongly opposed on behalf of the plaintiff. It is submitted that it is merely a delay tactic. No complaint against earlier counsel has been filed which shows that the defendant no. 1 is merely trying to put entire blame on her counsel and shirk her responsibility as a defendant in the matter. It is also submitted that earlier counsel has filed on record the letter sent by him through registered post to defendant no. 1 informing her about withdrawal of his vakalatnama. Under Section 27 of General Clause Act, there is a presumption that the said letter was duly served on the defendant but the defendant is very conveniently silent about the said letter in his application under consideration. It is also submitted that the son of the defendant no. 1 namely Neeraj had received the court notice sent to defendant no. 1 after withdrawal of her vakalatnama by her counsel but very conveniently defendant no. 1 has also denied the receipt of the same. It is also submitted that even after being proceeded ex-parte, son of defendant no. 1, Neeraj appeared before the court on 19.08.2019 and was informed about ex-parte order but still the application under consideration has been filed after more than one year of the same. It is submitted that defendant can not be permitted to put the entire blame on his earlier counsel and shirk her own responsibility of diligently pursuing her matter. It is further submitted that there is no merit in the application of defendant no. 1 and the same deserves to be dismissed. Reliance has also been placed upon the following citations:-

75 (1998) Delhi Law Times 634 Sh. M. Paul Bahadur Vs. UOL

AIR (2005) NOC 7 (Raj.) Lala Ram Vs. Gayatri Devi

8. I have heard the arguments and carefully perused the records.

9. During the course of arguments, the defendant no. 1 has denied receipt of court notice, however, perusal of the record shows that son of the defendant no. 1 Neeraj has received the court notice. Even summons for the suit were received by him. Accordingly, mere denial does not inspire the confidence of the court. It is further alleged that the vakalatnama of the defendant no. 1 was withdrawn by Ms. Neelam Panchal who was not even the counsel for the defendant no. 1. This again appear to be a wrong submission as

the vakalatnama filed on record on behalf of defendant no. 1 bears the signatures of both Sh. Rakesh Kansal and Ms. Neelam Paanchal. Moreover, the entire blame of misguidance has been put on earlier counsel Sh. Rakesh Kansal but the same is not supported by any kind of complaint against the counsel. No explanation is given that why defendant no. 1 did not appear despite service of court notice. Accordingly, the application filed by defendant no. 1 is found to be without any merits.

10. However, considering the paramount interest of justice, that a case should be decided after hearing both the parties, I deem appropriate to give one opportunity to defendant no. 1 subject to payment of cost of Rs. 10,000/- to be paid to the opposite counsel to compensate. No delay caused due to her non-appearance. It is made clear that defendant no. 1 will be permitted to cross examine the witnesses of the plaintiff only after payment of cost and only two opportunities will be given for cross examination.

11. The application of defendant no. 1 is allowed in these terms .

Re-notify for payment of cost and for PE on 22.12.2020.

Shivali Sharma

Additional District Judge-03(West)

Tis Hazari Court/19.10.2020