

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5171 OF 2010
[Arising out of SLP(C)No.18148 OF 2010(CC No.8637)]

M/S DUBEY BUILDERS & INDUSTRIES & ANR.

.....APPELLANTS

VERSUS

BIRDH RAJ BHANDARI

.....RESPONDENT

O R D E R

Delay condoned.

Issue notice to the respondent.

Mr.Rana Mukherjee accepts notice on behalf of the respondent.

Shri Bhaskar Gupta, learned senior counsel appearing for the respondent fairly agreed that the matter may be disposed of at the admission stage.

Leave granted.

Heard learned counsel for the parties and perused the records.

The suit filed by the respondent for possession and mandatory injunction in respect of 6 Biswas of land comprised in Khasra No.191, Khata No.456, Khewat No. 50 of Village Kilokri was decreed ex parte by the learned Additional District Judge (hereinafter referred to as 'the trial Court') vide judgment dated 30.3.1992. After 36 days, the appellants filed an application under Order 9 Rule 13 for setting aside the ex parte decree by asserting that they are residents of Jammu and their counsel had assured them

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that they do not have to appear on each date of hearing and he will look after their interest, but he failed to appear on the date of hearing resulting in the passing of ex parte decree.

The

respondent contested the application for setting aside ex parte decree and pleaded that the assertion contained in the application was factually incorrect.

The parties led evidence in support of their respective cases. After considering the pleadings and

evidence of the parties, the trial Court dismissed the application. By the impugned order, the learned Single Judge confirmed the order of the trial Court by observing that there are inherent contradictions in the pleadings and evidence of the appellants herein and the case put forward by them does not appear to be convincing.

In our view, the trial Court and the High Court have taken an extremely technical view of the alleged discrepancy in the pleadings and the evidence produced by the appellants in support of their prayer for setting aside the ex parte decree. The trial Court should have, keeping in view the interest of justice, set aside the ex parte decree so as to enable the appellants to contest the suit on merits.

In the premise aforesaid, the appeal is allowed, the impugned order of the High Court as also the one passed by the trial Judge are set aside and the matter is remitted to the trial Court for fresh disposal of the suit in accordance with law.

Since the case is being remanded, we direct both the parties to maintain status quo as it is obtaining today till the disposal
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of the suit.

As the matter is almost 18 years old, we direct the trial Court to make an endeavour to dispose of the suit as early as possible but latest within a period of nine months from the date of receipt/production of a copy of this order.

.....J.
(G.S.SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
JULY 8, 2010.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2010

(CC 8637/2010)

(From the judgement and order dated 05/11/2009 in FAO No. 239/1992
of The HIGH COURT OF DELHI AT N. DELHI)

M/S DUBEY BUILDERS & INDUSTRIES & ANR.

Petitioner(s)

VERSUS

BIRDH RAJ BHANDARI

Respondent(s)

With I.A.1 (C/delay in filing SLP)

Date: 08/07/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)

Mr. Peeyoosh Kalra,Adv.

Mr. Jagjit Singh Chhabra,Adv.

For Respondent(s)

Mr. Bhaskar Gupta,Sr.Adv.

Mr. Rana Mukherjee,Adv.

Mr. I. Ghosh,Adv.

Ms. Swati Sinha,Adv.

Ms. Jayasree Singh,Adv.

For M/S Fox Mandal & Co.,Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Issue notice to the respondent.

Mr.Rana Mukherjee accepts notice on behalf of the
respondent.

Leave granted.

The appeal is allowed in terms of the signed order.

Since the case is being remanded, we direct both the parties
to maintain status quo as it is obtaining today till the disposal
of the suit.

(Satish K.Yadav)

Court Master

(Phoolan Wati Arora)

Court Master

(Signed order is placed on the file)