



2019 INSC 731

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4507 OF 2019

(@ S.L.P.(C) No.35428 of 2017)

ROBIN THAPA

... APPELLANT(S)

VERSUS

ROHIT DORA

... RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1 . The appeal by Special Leave is directed against the Order passed by the High Court of Uttarakhand at Nainital allowing the Revision Petition filed by the respondent under Section 115 of The Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code' for short) and setting aside the Order passed by the Trial Court under Order 9 Rule 13 of the Code by which the *ex parte* decree obtained by the respondent in this appeal, has been set aside.

2 . The respondent, who is hereafter referred to as the plaintiff, filed the Suit O.S. No. 490 of 2013 seeking specific relief and mandatory injunction. By Judgment dated 09.10.2014, Civil Judge Senior Division, Dehradun decreed the Suit.

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3. The petitioner, who is defendant in the Suit, filed an application dated 02.12.2015 supported by an application for condonation of delay. The respondent filed the objections, and as noticed, overruling the objections of the respondents, the Trial Court allowed the application filed by the petitioner under Order 9 Rule 13 of the Code, which has been set aside by the High Court.

4. The learned Counsel for the petitioner would submit that the original summons was served on 17.12.2013 on the mother of the petitioner. The Trial Court itself issued further summons on 23.04.2014. On 02.07.2014, the petitioner filed an application. Thereafter, the Suit came to be transferred to another Court, and thereafter, without any notice to the petitioner, the Suit came to be decreed.

5. Counsel for the appellant would submit that the property is the residential property. It is much more valuable than the amount shown in the agreement. The transaction was essentially a loan transaction and opportunity must be given to contest the matter on merits.

6. *Per contra*, the learned Counsel for the decree holder would submit that ample opportunity was given to the appellant, and in spite of the same, he has not contested the matter. Appellant has another residential building. The building in question was let out on rent.

7. Most importantly, the learned Counsel submits that after levying execution of the decree, the property has been conveyed to the respondent by the orders of the Court. In other words, sale deed has

already been executed in her favour. It is respondent's case that appellant was served notice by the executing court. There is no scope for interfering with the matter by this Court.

8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

9. The disputed agreement is dated 18.04.2012. Summons was issued and it was received but according to the appellant, by his mother. The Trial Court has apparently accepted the case of the appellant that the mother did not bring the receipt of the summons to the notice of the appellant and that it was sometime in June, 2014 that the appellant can be credited with knowledge of the Suit. The Order dated 02.07.2014 reads as follows:

“On behalf of the plaintiff ex-parte evidence by way of affidavit (20A2) is filed.

The ex-parte proceeding against the defendant is allowed.

The application is submitted to engage an advocate by the defendant. However, the suit is declared ex-parte evidence, therefore, the same is rejected. Now the matter is fixed for ex-parte argument on dated 08.08.2014.”

10. Order further appears to reveal that the plaintiff was present in person. The plaintiff has filed his proof affidavit. It was decided to proceed against the appellant *ex parte*. There is, however, a reference

to the application to engage an advocate by the appellant. The case stood posted for *ex parte* argument on 08.08.2014. As parties were not present on the said day, the case was posted to 15.09.2014. However, on 12.09.2014, the case stood transferred to another Court. No intimation was given under Rule 89A to the appellant.

11 . The further case of the appellant is that he came to know from the plaintiff that the case was fixed for judgement on 17.11.2015. He has alleged that he contacted his counsel but he did not get a satisfactory reply. He also has a case that he appeared on 17.11.2015 in court, and then, he only came to know that judgement was rendered on 09.10.2014. A new counsel was engaged on 26.11.2015. Thereafter, the application was filed.

12 . One fact stands out and that is, that the appellant came to be served notice of the execution proceedings through said messenger on 27.03.2015. Thus, the case of the appellant that appellant came to know about the passing of the decree only on 17.11.2015, cannot be acted upon. This is besides noticing that in execution of the decree, the sale deed has been executed in favour of the respondent and it is only thereafter that despite receipt of the notice dated 27.03.2015, the appellant has set up the case that he came to know of the passing of the decree only several months thereafter.

13. The matter arises from a suit for specific performance. It may be true that there is a case for the respondent that the appellant has actually let out the building on rent. The appellant's case is that this is the appellant's residential house and the matter is a loan transaction. Specific relief is undoubtedly a discretionary relief. Appellant has submitted that the appellant is prepared to deposit the entire amount spent by the respondent towards getting sale deed executed. We would think that the interest of justice demands that subject to putting the appellant on terms, an opportunity should be given to the appellant to contest the case and the case must be directed to be disposed of within the time limit. Accordingly, we allow the appeal and set aside the impugned order subject to the following conditions:

- (a) The appellant will deposit a sum of Rs.67,400/- (Rs.57,400/- towards stamp duty paid by the respondent + Rs.10,000/- towards registration expenses etc.) within a period of one month from today in the Execution Court.
- (b) The appellant will further deposit a sum of Rs.50,000/- as costs to be paid to the respondents. This amount will also be deposited in the Execution Court within a period of one month from today.

Upon depositing the aforesaid amounts, it will be open to the respondent to withdraw the same and the sale deed will stand set aside. The respondent can also withdraw the amount of

Rs.92,000/- deposited by him towards balance sale consideration. In case the amounts as aforesaid are not deposited within the stipulated period, the appeal will stand dismissed and the impugned order will stand confirmed.

- (c) We further direct that if the appellant complies with the conditions as aforesaid, the trial Court will take up the suit and dispose of the same as expeditiously as possible but at any rate within a period of six months from the date on which the respondent brings the fulfilment of the aforesaid conditions to the notice of the trial Court.

.....J.
(ASHOK BHUSHAN)

.....J.
(K.M. JOSEPH)

New Delhi,
July 08, 2019.