

G.P. SRIVASTAVA
v.
SHRI R.K. RAIZADA AND ORS.

MARCH 3, 2000

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

Code of Civil Procedure, 1908—Order 9, Rule 13—Ex parte decree—Power to set aside—Party to show sufficient cause for non-appearance on the date of hearing.

Ex parte decree—Setting aside of—Narrow and technical approach of court—Held, leads to unnecessary prolonging of litigation—Further, justice is met only if application is allowed giving opportunity to prove his case within a reasonable time.

Interpretation of Statutes—Liberal construction—To enable the court to do complete justice.

A suit for arrears of rent, ejection and damages filed against the appellant was decreed *ex parte* due to non-appearance. The appellant filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the *ex parte* decree. It was pleaded that non-appearance of the appellant or his counsel was due to appellant's employment, his illness and death of counsel's nephew. Both the trial court and the High Court did not accept the pleas raised by the appellant. The High Court also noticing the appellant's previous negligence rejected the revision petition. Hence these appeals.

Allowing the appeals, this Court

HELD : 1.1. Under Order 9 Rule 13 of the Code of Civil Procedure the court has no power to set aside an *ex parte* decree unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of hearing or the court is satisfied that the summons were not duly served upon the defendant. [100-G-H]

1.2. The 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding *ex parte* and cannot be stretched to rely upon other circumstances anterior in time. The party

A cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not *malafide* or intentional. [101-C-D]

B 1.3. The words “was prevented by any sufficient cause from appearing” must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 of the Code has to be construed as elastic for which no hard and fast guidelines can be prescribed. [101-B]

C 2.1. In the instant case, the appellant pleaded his non-appearance due to his employment, his illness and death of counsel’s nephew. His defence was found reasonable and was made within statutory period. The High Court erred in dismissing the appellant’s application. Further, the mere fact of obtaining a certificate from a private doctor could not be made a basis for rejecting the claim of sickness. If the defendant is found to be negligent, the other side may be compensated by costs and *ex-parte* decree be set aside on such terms and conditions. Thus, the *ex-parte* is set aside on payment of costs of Rs. 5,000 to the other side.

E [101-E; 100-F; 102-A]

F 2.2. Both the trial court and the High Court have adopted a very narrow and technical approach in dealing with a matter pertaining to the eviction of the appellant despite the fact he had put a reasonable defence and had approached the Court for setting aside the *ex-parte* decree, admittedly, within the statutory period. The litigation between the parties has unnecessarily been prolonged for about 17 days and the ends of justice can be met only if the appellant is allowed opportunity to prove his case within a reasonable time. As such the trial court is directed to afford an opportunity to the appellant and dispose of the suit within six months.

G [101-F-H; 102-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1934-35 of 2000.

H From the Judgment and Order dated 23.9.1999 and 11.10.99 of the Allahabad High Court in Civil Revision No. 73 of 1985 and Review Petition

No. 201 of 1999 respectively.

Gopal Subramaniam, Santosh Kumar, Devesh Singh, Pradeep Ranjan Tiwari and Rakesh K. Sharma for the Appellant.

Tara Chandra Sharma Ajay Sharma and Ms. Pankhuri Srivastava for the Respondents.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

On his failure to appear in the Court either personally or through his Advocate, the suit for arrears of rent, ejection and damages filed against the appellant was decreed *ex-parte* on 10.3.1983. The application for setting aside the *ex-parte* judgment and decree filed on 7.4.1983 in terms of Order 9 Rule 13 of the Code of Civil Procedure was dismissed by the Trial Judge on 14.5.1985. The revision petition No.73 of 1985 filed by the appellant was dismissed by the High Court vide the order impugned on 23rd September, 1999 on the ground that the appellant had failed to establish any just or sufficient cause for his non appearance on the date fixed when the *ex-parte* proceedings were initiated against him.

We have heard the learned counsel for the parties and perused the papers.

The facts of the case are that respondent-landlord filed a suit for ejection and recovery of the arrears of rent on 5.8.1981 alleging therein that as the tenanted premises was new construction, the same is not covered under U.P. Act No.30 of 1972. The appellant-defendant-tenant was alleged to have failed to pay the rent since June, 1980 and he was in arrears amounting to Rs.4,000. A notice under registered cover dated 29th May, 1981 was sent by the respondent on the address of the appellant terminating his tenancy. Despite service of the notice the appellant was stated to have neither vacated the tenanted portion nor paid the arrears of rent or damages which necessitated the filing of the suit. The appellant-defendant resisted the suit mainly on the ground that the entire plot of land of Lane No.21, Shanker Nagar, Nirala Nagar, Lucknow was let out to him in the month of February, 1997 and he was permitted to raise construction thereon. In pursuance to the aforesaid permission, the appellant claimed to have constructed the entire

A portion of the tenanted premises after incurring an amount of Rs.25,000. Monthly premium of Rs.300 was settled to be paid. The competence of the respondent-plaintiff to file the suit was also challenged alleging that he was not the landlord of the appellant.

B On 10th March, 1983 the case was called on for hearing by the Court in the early hours but as no-one appeared on behalf of the appellant, the same was again taken up at 2 p.m. As none appeared at that time also, the suit was decreed *ex-parte* on the basis of evidence produced in the case. In his application under Order 9 Rule 13 of the Code of Civil Procedure, praying for setting aside *ex-parte* judgment and decree, the appellant submitted that
C he was posted as Assistant Engineer in the Irrigation Department and on account of the construction of the bridges over the casual drains he had to remain at the site in the interests of public. He became indisposed in the evening of 8th March, 1982 at the site which was about 85 kilometers away from Lucknow and could not move or return back to Lucknow till 11.3.1983
D which prevented him to appear in the Trial Court on 10th March, 1983. Unfortunately, the young nephew of the counsel of the appellant met with an accident on 10.3.1983 and expired which prevented his counsel also to appear in the Court on that date. It was contended that the absence of the appellant and his counsel in the Trial Court was on account of the aforesaid
E circumstances and not intentional. The application was supported by his affidavit and a medical certificate.

The Trial Court did not accept the pleas raised by the appellant and found that the absence of the appellant or his counsel in the Court on 10.3.1983 was not for just or sufficient cause. The filing of the medical
F certificate was not disputed but the same was not relied on as it was found to have been obtained from a private doctor and not from a Government doctor. The High Court also did not accept the contentions of the appellant and noticing his previous conduct rejected the revision petition refusing to set aside the *ex-parte* decree passed against him.

G Under Order 9 Rule 13 C.P.C. an *ex-parte* decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by
H any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the

defendant in the case on the date of hearing, the Court has no power to set aside an *ex-parte* decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non appearance refers to the date on which the absence was made a ground for proceeding *ex-parte* and cannot be stretched to rely upon other circumstances anterior in time. If 'sufficient cause' is made out for non appearance of the defendant on the date fixed for hearing when *ex-parte* proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not malafide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.

In the instant case, it is not disputed that the nephew of the counsel of the appellant had died in a road accident on the date of hearing and that the appellant himself was not at the station on account of his employment and illness. The mere fact of obtaining a certificate from a private doctor could not be made a basis for rejecting his claim of being sick. Both the Trial Court as also the High Court have adopted a very narrow and technical approach in dealing with a matter pertaining to the eviction of the appellant despite the fact that he had put a reasonable defence and had approached the Court for setting aside the *ex-parte* decree, admittedly, within the statutory period. Even if the appellant was found to be negligent, the other side could have been compensated by costs and the *ex-parte* decree set aside on such other terms and conditions as were deemed proper by the Trial Court. On account of the unrealistic and technical approach adopted by the courts, the litigation between the parties has unnecessarily been prolonged for about 17 years. The ends of justice can be met only if the appellant-defendant is allowed opportunity to prove his case within a reasonable time.

Under the circumstances, the appeal is allowed by setting aside the

- A order of the High Court and of the Trial Court. The *ex-parte* Judgment and decree passed against the appellant is set aside on payment of costs of Rs.5,000 to the other side. The Trial Court is directed to afford the appellant opportunity to prove his case and expedite the disposal of the suit preferably within a period of six months from the date of receipt of the copy of this order.

B

N.J.

Appeals allowed.