

(A3)
Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 171 of 1987

Union of India and others ... Applicant

Vs.

Bhagwati ... Respondent.

Hon.D.S.Misra, AM

Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This application u/s.151 of the Code of Civil Procedure has been received from the Court of Addl. Munsif West Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985. It is alleged that as the instructions could not be received from the defendant-applicants well in time, the written statement could not be filed in the original suit no.192 of 1987 within time and when the written statement was received the Court had already ordered to proceed the case ex-parte and the written statement filed by the applicants was not admitted and the suit was decided ex-parte on 20.9.1978. It was contended before us that the application was very much maintainable u/s.151 CPC. The plaintiff-respondent has contested the application and his contention is that the order dated 20.9.1978 passed in the case amounts to a decree and an appeal lies against it u/s.96 CPC and an application u/s.151 CPC is not maintainable for setting aside the said order. It was also contended before us that the suit was decreed under O.VIII R.10 CPC and the provisions of O.IX are not applicable to this case. It was also contended that this application was wrongly transferred by the learned Munsif to this Tribunal and it should have been decided by the Munsif himself under the law.

2. We have carefully considered the contentions raised on behalf of the parties and on examining the facts of the case from its record, the contentions of both the parties appear to be misplaced. The record shows that after the service of the summonses of the case, the applicants obtained time thrice for filing the written statement without payment of any costs and thereafter the time was allowed to them again on 3 occasions on payment of Rs.10,25 and 30

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as costs and when the written statement was ^{not} filed by the extended date 3.7.1978 and the further application of the applicants for time was rejected, the case was posted for final hearing on 21.7.1978. On that date, the affidavit of the plaintiff-respondent was accepted in support of his case and 25.7.1978 was fixed for judgment. On the same date, the applicants had moved the application for setting aside the said order and for accepting their written statement. This application was rejected by the learned Munsif ~~and~~ on 15.9.1978 placing his reliance on the leading case Arjun Singh Vs. Mohinder Kumar (A.I.R. 1964 S.C-993) on the point with the observation that the stage for setting aside the ex-parte order had already expired. The case was posted for ex-parte orders and on 20.9.78 the ex-parte judgment was delivered by the learned Munsif with the clear observation that the suit is decreed ex-parte with costs.

3. It is amply clear from the record and the order dated 20.9.1978 itself that the suit is decreed ex-parte and not under any other provision of the CPC. The ex-parte decree can be set aside under O.IX R.13 CPC without going in appeal. the applicants should have moved an application under O.IX R.13 CPC and not u/s.151 CPC. However, the question of the wrong provision of law on the application does not appear to be much material and it is for the court to apply the relevant provision of law in view of the facts established in the case. We are, therefore, of the view that the contention of the respondents is only partially correct and though the application under u/s.151 CPC is not maintainable, it is maintainable under O.IX R.13 CPC and it was not necessary for the applicants to go on appeal for getting the ex-parte decree set aside.

4. Regarding the jurisdiction of this Tribunal to deal with such applications, we are of the view that this Tribunal has been entertaining such applications ~~only~~ from the very beginning and we see no reason to make an exception in the present case. Coming to the merits of the case, we find that though

there was inordinate delay on the part of the defendant-applicants in filing the written statement in the case and the case related to the Northern Railway which has a divisional office at Allahabad, we feel that the written statement was ready and filed on the date when the case was listed for ex-parte hearing. Sometimes due to non-availability of necessary record, the delay is caused in preparing the written statements and in the interest of justice, we feel that one more opportunity may be given to the applicants to contest the suit and the cause shown for restoration is, thus, deemed to be sufficient.

5. The application is accordingly allowed and the ex-parte decree is set aside subject to payment of Rs.100 (Rupees One Hundred only) as costs within a month to the respondent failing which the application shall stand rejected. In case the costs are paid, the Registry shall register the original suit as a fresh transferred application and list it for hearing.

[Signature]
MEMBER(J)

Dated: 8th July 1988
kkb

[Signature]
8/7/88
MEMBER(A)