

IN THE COURT OF SHRI GIRISH KATHPALIA,
DISTRICT & SESSIONS JUDGE (HQ)
TIS HAZARI COURTS, DELHI.

Ex. No. 47/2019

NEELAM
HOUSE No. Pvt. No. F-218
KHASRA No. 174, 4TH FLOOR
STREET No.6, VILLAGE WAZIRABAD
DELHI 110084

.....DECREE HOLDER

VERSUS

1. VIKRAMJEET SURI
S/o SHRI GOVIND SURI
2. GEETA
W/o SHRI VIKRAMJEET SURI

BOTH R/o HOUSE No. 10, GALI No. 6,
LUV KUSH GALI,
WAZIRABAD, DELHI - 84

....JUDGMENT DEBTORS

Date of filing : 09.01.2019

First date before this court : 30.05.2019

Arguments concluded on : 28.02.2020

Date of Decision : 12.05.2020

Reason for delay in pronouncement of Judgment : Covid19 Lockdown

Appearance : Shri Dinesh Kumar, counsel for JDs

Ms. Subhra Mehdiratta, counsel for DH

Misc. No. 190/2019

NEELAM
HOUSE No. Pvt. No. F-218
KHASRA No. 174, 4TH FLOOR
STREET No.6, VILLAGE WAZIRABAD
DELHI 110084

.....PLAINTIFF

VERSUS

1. VIKRAMJEET SURI
S/o SHRI GOVIND SURI
2. GEETA
W/o SHRI VIKRAMJEET SURI

BOTH R/o HOUSE No. 10, GALI No. 6,
LUV KUSH GALI,
WAZIRABAD, DELHI - 84

....DEFENDANTS

Date of filing : 05.03.2019
First date before this court : 03.06.2019
Arguments concluded on : 28.02.2020
Date of Decision : 12.05.2020

Reason for delay in pronouncement of Judgment : Covid19 Lockdown

Appearance : Shri Dinesh Kumar, counsel for applicants/Defendants
Ms. Subhra Mehdiratta, counsel for non applicant/Plaintiff

COMMON ORDER

1. By way of this common order, application dated 28.02.2019 brought under the provisions of Order IX Rule 13 CPC by

the suit defendants seeking the setting aside of judgment and decree dated 30.10.2018, an opportunity to file written statement and lead evidence in the suit, as well as Execution Objections dated 11.04.2019 brought under the provisions of Order XXI CPC in the execution petition shall be disposed of. Replies to the application and objections were filed on behalf of the suit plaintiff, strongly opposing the application and objections. The application as well as the objections raise same legal and factual matrix, so were heard together. I heard learned counsel for both sides who took me through the original records of the suit.

2. On 07.11.2017, a suit for recovery of possession of immovable property, permanent injunction and occupation charges was instituted and registered before my learned predecessor, which culminated into a judgment and decree dated 30.10.2018 after consideration of written arguments filed on behalf of the suit defendants. The suit defendants opted to file an appeal against the judgment and decree dated 30.10.2018 before the Hon'ble Delhi High Court but did not press the same, so the said appeal was disposed of by the Hon'ble Single Judge of the Delhi High Court vide order dated 05.02.2019 observing that *"the remedy of the appellants will be, if permissible in law, to move an application before the trial court and this is without observing in any manner with respect of maintainability or merits of such an application if moved by the*

appellants before the trial court". Hence, the application under consideration after condonation of delay in filing the same vide order dated 29.11.2019.

3. Learned counsel for applicants/defendants took me through the original trial record and contended that on 20.04.2018, my learned predecessor ought to have proceeded ex-parte against the defendants since Shri M.K. Verma, the counsel appearing before the court did not hold vakalatnama on behalf of defendant no. 2 and therefore, the present application under Order IX Rule 13 CPC is sustainable before this court. Learned counsel for applicants/defendants also submitted that the applicants have already filed a complaint before the Bar Council of Delhi against Shri M.K. Verma advocate for his misconduct in appearing without vakalatnama. In support of his case, learned counsel for applicants placed reliance on the judgments in the cases of ***Rafiq & Anr vs Munshi Lal & Anr***, 1981 UJ(SC) 505 and ***Abdul Aziz vs A.Raj Chhabra***, AIR 1968 All 119.

4. On the other hand, learned counsel for respondent/plaintiff argued that since the defendants were never proceeded ex-parte, application under Order IX Rule 13 CPC is not even maintainable. It was also argued by learned counsel for respondent/plaintiff that the defendants/applicants are compulsive

liars as they had consciously engaged Shri M.K. Verma as their counsel, not just in the present suit but even in another suit filed by them against the present respondent/plaintiff.

5. In the course of above arguments, when both applicants present personally in court claimed that they had never engaged Shri M.K. Verma as their counsel in this suit filed against them or the other suit filed by them against the present respondent/plaintiff, going by the material placed before this court, it was considered necessary so joint statement of defendants/applicants was recorded on oath. Shockingly, in most brazen manner, the defendants/applicants made a false statement on oath that in the other suit filed by the present applicant no. 1 against the present respondent, neither of the applicants had engaged Shri M.K. Verma as their counsel, but they could not deny their signatures on the copies of plaint Ex. D1 and copies of vakalatnamas Ex. D2 and Ex. D3, all of which clearly show Shri M.K. Verma as their counsel. Such brazen falsehood on oath cannot be ignored.

6. As reflected from the original trial record of this suit, on service of summons for the date fixed i.e. 06.12.2017, Shri M.K. Verma appeared as counsel for defendant no. 1 and filed vakalatnama. On 6.12.2017 itself, Shri M.K. Verma advocate disclosed before my learned predecessor that name of defendant no.

2 was Smt. Geeta and not Smt. Renu, so plaintiff was directed to file amended memo of parties and take fresh steps for issuance of summons to defendant no. 2 after correction of name. For the next date 22.01.2018, defendant no. 2 Smt. Geeta was served with summons through defendant no. 1, so Shri M.K. Verma appeared as counsel for both defendants and sought time to file written statement cum counterclaim, so my learned predecessor posted the matter for 22.02.2018. On 22.02.2018, once again Shri M.K. Verma appeared on behalf of both defendants and on his request my learned predecessor permitted the written statement to be filed subject to law of limitation and the matter was posted for 23.03.2018. On 23.03.2018, on behalf of defendants, clerk of Shri M.K. Verma appeared but court was not held and matter was adjourned to 20.04.2018. On 20.04.2018, Shri M.K. Verma appeared on behalf of both defendants but without written statement, so by way of detailed order, my learned predecessor closed the opportunity of defendants to file written statement and posted the matter to 17.05.2018 for recording plaintiff's evidence. On 17.05.2018, plaintiff was chief examined and her cross examination had to be deferred by my learned predecessor as none appeared on behalf of defendants, so the matter was adjourned to 12.07.2018. On 12.07.2018, Shri M.K. Verma appeared on behalf of both defendants and at his request, my learned predecessor adjourned the matter to 09.08.2018 for cross examination of plaintiff subject to cost of Rs.

500/-. On 09.08.2018, neither the defendants nor their counsel appeared nor cost was sent, so by detailed order dated 09.08.2018 my learned predecessor closed the opportunity to cross examine the plaintiff and the matter was posted to 21.08.2018 for final arguments. On 21.08.2018 Shri M.K. Verma, counsel appeared on behalf of defendants and after part arguments, sought time to file written submissions which was allowed and matter was posted to 05.09.2018. On 05.09.2018, Shri M.K. Verma counsel for both defendants filed written arguments and the matter was posted by my learned predecessor for orders. Finally on 30.10.2018, the impugned judgment and decree was passed by my learned predecessor.

7. There is no dispute that summons on the defendant no. 2 Smt. Geeta were served through defendant no. 1 Shri Vikramjit. There is no dispute that Shri M.K. Verma, in whose favour vakalatnama had been issued by defendant no. 1 continued to appear on behalf of both defendants. Admittedly, order dated 20.04.2018, whereby opportunity to file written statement was closed and/or order dated 09.08.2018, whereby opportunity to cross examine plaintiff was closed, having not been challenged have attained finality. Rather, as mentioned above, Shri M.K. Verma continued to appear as counsel for the defendants till fag end and even filed written submissions before my learned predecessor. Now,

the defendants, especially defendant no. 1 cannot claim that on 20.04.2018, my learned predecessor ought to have proceeded ex-parte.

8. I also examined the question whether Shri M.K. Verma advocate committed a professional misconduct by appearing on behalf of defendant no. 2 without authority. The judicial precedents cited on behalf of defendants lay down that a party to the *lis* should not be made to suffer for the fault or misconduct of the counsel.

9. In the recent past a trend is being observed, where the defaulting party heaps the trash of allegations against the previous counsel and seeks to invoke the principle that litigant should not be penalized for the fault of counsel. There is no blanket proposition to that effect. Conduct and overall status of the litigant also has to be kept in mind. The said protective principle, evolved for the benefit of a rustic, illiterate and lay litigant cannot be extended to the literate affluent class and business entities.

10. In the case of ***New Bank of India vs M/s Marvels (India)***, 93(2001) DLT 558, the Hon'ble Delhi High Court held that there is no absolute proposition of law that all cases of mistakes on the part of the advocate would constitute sufficient cause. What is to be seen is whether absence of the advocate was bonafide and this

has to be examined in conjunction with the conduct of the party who had engaged the advocate. It is to be seen as to whether the litigant was pursuing his case diligently or the conduct and approach was so callous that it amounted to negligence. If this is so, then non appearance would not be bonafide since failure of lawyer to appear for no fault of the party is not necessarily sufficient cause for non appearance of the party.

11. In the case of ***Badri Bhagat Jhandewalan Temple vs Delhi Development Authority***, 106 (2003) DLT 503, the Hon'ble Delhi High Court held that negligence of a lawyer in not appearing on one or two dates of hearing is understandable and the aggrieved party can take advantage of such negligence, but when the negligence and conduct of the party is of highest magnitude and is writ large, the party cannot take shelter behind its advocate. If a party does not care to know about the status of its case or the proceedings in the suit, such party has to be shown the door. The Hon'ble High Court made reference of a case reported as 1999 All India High Court Cases 495 (Delhi) and quoted thus :

“By engaging a counsel, a party to the case is not relieved of his duties and obligations in the matter. Where the party either does not brief the counsel or keeps no contact with him, it is the party who is in default and negligence and shall have to bear consequences”.

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12. In the case of ***Punjab National Bank vs M/s Leo Electronics & Allied Industries***, 2007 II AD (Delhi) 519 while dealing with issue of condonation of delay, the Hon'ble Delhi High Court rejected the plea of laying blame on the previous counsel, on account of absence of any action taken against the previous counsel or complaint lodged with the Bar Council.

13. In the case of ***Rabi Shankar Sen Gupta vs ITDC***, 2007 (9) AD (Delhi) 679, the Hon'ble Delhi High Court observed thus :

"8. At the same time, a litigant cannot claim absolute immunity and wash his hands off by laying the entire blame upon his Advocate for negligence in conducting the matter. Reference in this regard is made to a judgment of the Supreme Court in the case of ***Salil Dutta v. T.M. & M.C. Private Ltd.*** reported as JT 1993 (4) Supreme Court 528 wherein it was observed as below:

"The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the

system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.”

10. Admittedly, no complaint has been filed against the previous Advocate, who was allegedly not diligent in pursuing the writ petition on behalf of the petitioner. Seeking to pass the entire blame on to the Advocate and trying to portray that the petitioner was a quasi literate person and hence totally unaware of the nature and significance of the pending proceedings is quite unacceptable, particularly, when the petitioner is a matriculate. Further, it is also not a case where the petitioner is not residing in the city and, therefore, could not remain in touch with his counsel. Having participated in the inquiry proceedings and also having made representations to the management against the termination order, the petitioner appears to be well-aware of the nuances of litigation”.

14. Falling back to the present case, as mentioned above, summons on defendant no. 1 were duly served on him and summons on defendant no. 2 were served through defendant no. 1. Admittedly, defendant no. 2 is wife of defendant no. 1. Also admittedly, vakalatnama in the name of Shri M.K. Verma was signed by defendant no. 1 and Shri M.K. Verma continued to appear on behalf of both defendants till fag end of the suit.

15. 5,000/- In order to establish their allegation that Shri M.K. Verma was not authorized to appear as a counsel, the defendants placed on record a photocopy of a complaint purportedly filed before the Bar Council of Delhi against Shri M.K. Verma. But the said photocopy neither bears any stamp of filing nor is accompanied with any postal record of the same having been delivered or even dispatched nor any current status was filed. The said photocopy fails to inspire any confidence that a complaint of professional misconduct has been lodged against Shri M.K. Verma advocate by either or both of the defendants.

16. As observed above, the defendants/applicants/JDs are compulsive liars as they had audacity to state falsehood on oath that defendant no. 2 had not filed any suit against the present plaintiff while defendant no. 1 had filed a suit against the present plaintiff but in that suit Shri M.K. Verma is not his counsel, whereas according to copy of plaint and supporting affidavits Ex. D1, the suit was filed by both defendants through Shri M.K. Verma as their counsel and both defendants even signed vakalatnamas as Ex. D2 and Ex. D3 in favour of Shri M.K. Verma advocate.

17. In view of above discussion, I am unable to find even a whiff of merit in the Application under Order IX Rule 13 CPC and the Execution Objections, so the same are dismissed with costs of

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Rs.15,000/- to be paid by the applicants to the non-applicant towards cost of this litigation, estimated on conservative side and a further cost of Rs.10,000/- to be deposited by the applicants with the Prime Minister's Citizen Assistance & Relief in Emergency Situations Fund. The costs so imposed shall be paid and deposited within two weeks and compliance affidavit shall be filed by the applicant Shri Vikramjeet Suri.

18. After the needful is done, file be consigned to Records.

Announced in the open court on
this 12th day of May, 2020 (through VC)

Girish Kathpalia

(GIRISH KATHPALIA)
District & Sessions Judge (HQ)
Tis Hazari Courts
Delhi