

P L D 2010 Lahore 466

Before Nasir Saeed Sheikh and Mamoon Rashid Sheikh, JJ

Messrs PIL COMPANY (PVT.) LTD. through Chief Executive/Director-Appellant

Versus

**ADDITIONAL DISTRICT AND SESSIONS JDUGE, LAHROE and another---
Respondents**

Regular First Appeal No.26 of 2001, decided on 30th June, 2010.

Civil Procedure Code (V of 1908)---

----O. IX, R.13 & O. XXXVII, Rr. 1, 2---Ex parte decree, setting aside of---Limitation---
Conditional leave to defend---Non-compliance of condition---Trial Court granted leave to defend
the suit, subject to furnishing of bank guarantee but defendant failed to comply with the
condition and remained absent, resultantly ex parte decree was passed against him---Application
for setting aside ex parte decree was filed beyond the period of thirty days, which application
was dismissed by Trial Court being barred by limitation---Validity---Application of defendant
for setting aside the decree under O. IX, R. 13 C.P.C. being time barred, order passed by Trial
Court did not suffer from illegality or irregularity---High Court, in exercise of appellate
jurisdiction, declined to interfere in the order passed by Trial Court---Appeal was dismissed in
circumstances.

Khawar Ikram Bhatti for Appellant.

Nemo for Respondent.

ORDER

Although the names of Messrs Ch. Muhammad Ashraf and M.A. Ghaffar-ul-Haq, Advocates, the learned counsel for respondent No.2, have appeared in the cause-list but no one has entered appearance on behalf of respondent No.2. Even on the last date of hearing respondent No.2 was not represented. He is, therefore, proceeded against ex parte. Respondent No.1 already stands deleted from the array of the parties through order dated 13-4-2005.

2. The brief facts giving rise to this appeal are that respondent No.2 filed a suit on 19-5-1999, under the summary procedure provided under the provisions of Order XXXVII of the C.P.C. in the Court of the learned District Judge, Lahore, against the appellant for the recovery of Rs.3,21,595. The said suit was filed on the basis of a cheque in the amount of Rs.3,21,595 issued by the appellant in favour of respondent No.2 which was stated to have been returned by the bankers of the appellant upon presentation with the endorsement "refer to drawer." Respondent No.2, therefore, .invoking the provisions of Order XXXVII of the C.P.C. filed the said suit.

3. Summons was issued to the appellant as contemplated under Order XXXVII, Rule 2(1) of the C.P.C. The appellant upon service filed an application under Order XXXVII, Rule 3(1) of the C.P.C. for leave to appear and defend the suit. The appellant's said application was resisted by respondent No.2. However, through order dated 3-6-2000 the appellant's application was allowed subject to furnishing a bank guarantee in the amount of Rs.3,21,595 within 15 days.

4. The suit was fixed thereafter for 15-6-2000 but as the requisite 15 days had not passed it was adjourned to 20-6-2000. As the appellant did not appear on either of the above dates, an ex parte decree was passed against the appellant for recovery of the sum of Rs.3,21,595.

5. On 22-7-2000 the appellant filed an application under Order IX, Rule 13 of the C.P.C. read with sections 148 and 151 of the C.P.C. whereby he prayed for setting aside of the ex parte decree dated 20-6-2000 and for enlargement of time to furnish the bank guarantee. It was, inter alia, contended by the appellant in the application that the suit was fixed for arguments for 2-6-2000 when it was adjourned for further arguments to 3-6-2000, when arguments were heard and the appellant's counsel was informed by the Reader of the Court that judgment had been reserved and the suit was fixed for announcement. of the same for 27-6-2000. However, when the appellant and his counsel appeared in the Court on 27-6-2000, they were surprised to note that conditional leave had been granted to the appellant on 3-6-2000 and since the appellant had not furnished the requisite bank guarantee within the stipulated period of 15 days the suit had been decreed ex parte against the appellant on 20-6-2000.

6. It was further contended that erroneous information had been given to the appellant by the Reader of the Court and it was no fault of his or his counsel for non-appearance in the Court on the relevant dates.

7. The appellant's application for setting aside the ex parte decree under Order IX, Rule 13 of the C.P.C. was admittedly time-barred by two days inasmuch as the learned trial Court had passed the ex parte decree on 20-6-2000 and the application for setting aside the same was filed on 22-7-2000. In the said application the appellant also invoked the provisions of sections 148 and 151 of the C.P.C. for enlargement of time in filing the bank guarantee.

8. The appellant's application for setting aside the ex parte decree was resisted by the respondent and through order dated 30-11-2000 the learned trial Court dismissed the application holding the same to be barred by time and not supported by the facts

9. Feeling aggrieved the appellant has filed the instant appeal assailing both the order and decree dated 20-6-2000 and the order dated 30-11-2000, inter alia, on the grounds that the appellant has been condemned unheard and the learned court below has failed to appreciate that the appellant was at all times ready to furnish the bank guarantee in compliance of the order dated 3-6-2000 but due to the misunderstanding in the dates of hearing the bank guarantee had not been submitted within time. Even otherwise, the suit of the respondent was not maintainable and unconditional leave should have been granted to the appellant. The learned trial Court should have recorded evidence before passing the impugned orders.

10. We have gone through the record of the case with the assistance of the learned counsel for the appellant and find that the application of the appellant for setting aside of the decree under Order IX Rule 13 of the C.P.C. was time barred, therefore, based on this fact the impugned order dated 30-11-2000 of the learned trial Court does not appear to suffer from illegality or irregularity. We are, therefore, not inclined to interfere in the said order.

11. The appeal resultantly fails and is accordingly dismissed.

M.H./P-22/L

Appeal dismissed.