

CASE NO.:
Appeal (civil) 10280 of 2003

PETITIONER:
Srei International Finance Ltd.

RESPONDENT:
Fairgrowth Financial Services Ltd. & Anr.

DATE OF JUDGMENT: 12/08/2005

BENCH:
CJI R.C.LAHOTI & P.K.BALASUBRAMANYAN

JUDGMENT:
JUDGMENT
With

C.A.No.10281/2003
Srei International Finance Ltd. ...Appellant

VERSUS

Fairgrowth Financial Services Ltd.& Anr. ... Respondents

The Special Court(Trial of Offences Relating to
Transactions in Securities)

at Bombay has passed two decrees (both exparte) against the
appellant-One decree is

for recovery of Rs. 14,53,327.23 ps. and interest thereon and is
dated 3.7.2003 passed in

Misc . Petition No. 50 of 2000 and the other decree is for
recovery of Rs. 17,70,015.58 ps.

and interest and is dated 9.7.2003 passed in Misc.
Petition No. 81 of 2000. Both the

decrees were passed ex-parte as none appeared for the appellant
on the date of hearing

before the

Special Court. In Misc. Petition No. 81 of 2000
(M.A. No. 243/2003) application was

moved for setting aside ex-parte decree and seeking
re-hearing on merits. The

application has

been rejected vide order dated 17.9.2003 by the Special Court, as in its opinion,

sufficient cause for default in appearance by the appellant or its counsel was not made

out. Feeling aggrieved, C.A.No.10280/2003 has been filed. The ex-parte decree passed in

Misc.Petition No.50 of 2000 dated 3.7.2003 is directly challenged in Civil Appeal No.

10281/2003.

Having heard the learned counsel for the parties, we are satisfied that the

approach adopted by the Special Court in rejecting the application for setting aside the

ex-parte decree moved by the appellant has been too rigid. It is well settled that,

ordinarily, a litigant should not be denied a hearing on merits unless something akin to

gross negligence or misconduct on his part in contesting the proceedings is made out.

Admittedly, in the present case, the appellant is a company having its corporate office

at Kolkata. According to it, it had instructed its solicitors at Kolkata who, in their turn,

had instructed solicitors in Bombay to appear and plead for the

appellant. It is pointed out that, initially, there was an

appearance by the Bombay solicitors but, later on, there was a default in the

appearance and sometime before the matters were taken up for hearing by the Special

Court, one of the members of the firm of solicitors for the appellant at Kolkata, who was

looking after the appellant's cases, had suffered a serious accident and remained

immobilized for a period of about nine months. In such circumstances, we agree with

the learned senior counsel for the appellant that a liberal view ought to have been taken

by the Special Court and the ex-parte decree should have been set aside. We place on

record the plea vehemently raised by the learned senior counsel for the appellant that

it is the same claim which forms part of two proceedings and there has been in effect a

double decree for the same amount passed against the appellant and if only the

appellant would have been given an opportunity of defending itself, it would have

demonstrated that the payments made by the appellant have more than satisfied the

respondents' claim. We note the pleas, but we are not expressing any opinion thereon.

In the totality of the facts and circumstances of the two cases, we are

satisfied that the appellant deserves to be allowed an opportunity of hearing and

contesting the two cases on merits.

The appeals are allowed as per the condition expressed hereunder. The

impugned order dated 17.9.2003 rejecting the application for setting aside ex-parte

decree dated 9.7.2003 is set aside and the ex-parte decree dated 9.7.2003 is set aside. The

ex-parte decree dated 3.7.2003 is also set aside.

Both the cases shall stand restored to the file of the Special Court.

The appellant is allowed the liberty of filing written statements in both the

cases and contesting on merits but subject to the condition that the appellant shall

within a period of four weeks from today deposit an amount of

Rs.14,53,327.23 ps with the Special Court which amount shall be retained in deposit by

the Special Court. The Court may invest the amount in an interest bearing account

with any Scheduled Bank. The amount shall be available to be disbursed subject to

final decision in the cases by the Special Court. Failing compliance with the above-said

direction, the decrees passed by

the Special Court shall stand and these appeals shall be deemed to have been dismissed.

The parties through their respective counsel are directed to appear before

the Special Court on 12.9.2005. The written statements shall be filed by the appellant

within four weeks from today in both the matters.

JUDIS