

CASE NO.:
Appeal (civil) 1778 of 2002

PETITIONER:
V.K. INDUSTRIES AND OTHERS

Vs.

RESPONDENT:
M.P. ELECTRICITY BOARD, RAMPUR, JABALPUR

DATE OF JUDGMENT: 01/03/2002

BENCH:
CJI, Shivaraj V. Patil & Bisheshwar Prasad Singh

JUDGMENT:

Shivaraj V. Patil, J.

Leave granted.

This appeal is by the defendants in the suit filed for recovery of Rs. 3,84,455.44 with future interest @ 24% per annum from the date of filing of the suit till realization of the amount. Suit summons were not personally served on the defendants. However, the trial court, on the basis of newspaper publication, held that service of summons on defendants was sufficient. In the absence of the defendants, the suit was decreed ex parte as prayed for by the plaintiff. On coming to know the ex parte decree, passed against them, the defendants filed a petition under Order IX Rule 13 of the Code of Civil Procedure. The trial court dismissed the said petition. Aggrieved by the same, the defendants filed Miscellaneous Appeal before the High Court.

The High Court allowed the Miscellaneous Appeal and set aside the ex-parte decree subject to the terms (i) the defendants shall, within a period of two months, deposit a sum of Rs.2,00,000/- with the trial court, (ii) shall furnish bank guarantee for the remaining sum claimed in the suit within the said period of two months and (iii) the amount so deposited shall be liable to be disbursed in accordance with the final order that may be passed in the suit. It is to be noted that the plaintiff has not challenged the order setting aside ex parte decree.

The only grievance of the appellants is that the terms, upon which ex parte decree is set aside, are onerous and not reasonable. On behalf of the respondents submission was made supporting the said terms as justified.

Ordinarily, a money decree is not stayed unconditionally and the judgment-debtor would be put on terms. Even so, such conditions must be reasonable having regard to all relevant factors. Although ex parte decree was passed against the appellants, once it is set aside on the ground of non-service of suit summons the money decree did not exist for execution. It is no doubt true that in restoring a case the court may impose conditions to deposit costs or

the decretal amount or some portion thereof or to ask the defendant to give security but such conditions should be reasonable and not harshly excessive. In the impugned order the appellants are put on terms to deposit a sum of Rs.2,00,000/- and to furnish a bank guarantee for the remaining suit claim within a period of two months. In our view these terms are onerous, harsh and unreasonable in the facts and circumstances of the case and that too even before the trial of the suit on merits.

On 29.10.2001, the learned counsel for the appellants stated that within two weeks, a sum of Rs. 50,000/- shall be deposited in the trial court and notice was issued on that day. During the course of hearing the learned counsel informed that a sum of Rs. 50,000/- is already deposited in the trial court.

We are of the view that it would be just and appropriate to direct the appellants to deposit a further sum of Rs.50,000/- in the trial court within a period of four weeks from today. The terms to deposit Rs.2,00,000/- and to furnish a bank guarantee for the remaining suit claim shall stand modified as indicated above. The impugned order shall remain undisturbed in all other respects.

The appeal is disposed of accordingly. No costs.

.....CJI.

.....J.

(SHIVARAJ V. PATIL)

.....J.

(BISHESHWAR PRASAD SINGH)

March 01, 2002.