

Present:
Mr. Justice Faruque Ahmed
and
Mr. Justice Md. Ruhul Quddus

F.M.A. No. 260 of 2002
with
Civil Rule No.9 (F.M.) of 2003

Syed Selim Ahmed
... Appellant

-Versus-

Apparel World (Pvt.) Ltd. and another
... Respondents

Mr. Md. Harunur Rashid, Advocate
... for the appellants

No one appears for the respondents

Judgment on 27.10.2011

Md. Ruhul Quddus, J:

This First Miscellaneous Appeal at the instance of a judgment debtor in an *ex parte* money decree is directed against order dated 10.7.2002 passed by the Joint District Judge, third Court, Dhaka in Miscellaneous Case No.52 of 2000 dismissing the same for default. The Miscellaneous Case was filed under Order IX rule XIII of the Code of Civil Procedure for restoration of the money suit on setting aside the *ex parte* decree.

Facts relevant for disposal of the First Miscellaneous Appeal as well as the connected Civil Rule, in brief, are that respondent No.1 instituted Money Suit No.21 of 1997 in the third Court of

Subordinate Judge (now Joint District Judge), Dhaka impleading the appellant and another as defendants for a money decree of Taka 1,18,30,180/= (one crore eighteen lac thrity thousand one hundred eighty) only. The appellant entered appearance and filed a written statement on 23.10.1997. During the suit was pending he went to U.S.A and did not take any other step. Ultimately the suit was decreed *ex parte* on 5.4.2000. The plaintiff-company as decree holder (herein respondent No.1) put the decree in execution by filing Money Execution Case No.4 of 2000.

The appellant through his constituted attorney Ms. Selina Rahman filed Miscellaneous Case No.52 of 2000 under Order IX rule XIII of the Code for restoration of the money suit on setting aside the *ex parte* decree. The Miscellaneous Case was fixed for peremptory hearing on 1.7.2002, when his (appellant's) Advocate filed an application for adjournment on the ground of his absence in the Country. The application was allowed and the case was fixed on 10.7.2002, on which day learned Advocate for the appellant filed another application for adjournment. The learned Joint District Judge heard the application, rejected the same and also dismissed the miscellaneous case for default by the impugned order dated 10.7.2002.

The appellant returned home on 19.9.2002, preferred the instant first miscellaneous appeal against the said order dated 10.7.2002, and subsequently obtained an order staying all further proceedings in Money Execution Case No.4 of 2000.

Mr. Harunur Rashid, learned Advocate appearing for the appellant submitted that the appellant was quite diligent in pursuing the miscellaneous case. Because of his absence in the Country, his learned Advocate prayed for adjournment on 1.7.2002, but the Court below did not allow him adjournment for a reasonable time and fixed the miscellaneous case within a very short time on 10.7.2002. On the day so fixed, the learned Judge rejected his another application for adjournment and dismissed the case for default by the impugned order, which was illegal and should be set aside for ends of justice.

We asked the learned Advocate for the appellant to produce some documents such as the passport, ticket etc. to prove his contention that at the relevant time the appellant was abroad. In spite of taking time, ultimately he failed to produce any such document.

We have gone through the records. It appears from the application for stay that the appellant appeared in the money suit, filed written statement on 23.10.1997 and thereafter went to U.S.A. In spite of entering appearance and filing written statement, he did not take any more step towards contesting the suit and allowed it to be decreed *ex parte* on 5.4.2000. He filed Miscellaneous Case No.54 of 2000 for restoration of the money suit on setting aside the *ex parte* decree, but did not diligently pursue the case and ultimately it was dismissed for default on 10.7.2002. Challenging the said order he moved in this Court with the instant first

miscellaneous appeal, but still he fails to show his diligence in pursuing the matter. He also fails to produce any document in support of his stay in U.S.A.

Under the facts and circumstances, it does not appear that the learned Joint District Judge committed any illegality in dismissing the miscellaneous case for default. The plaintiff-company (herein respondent No.1) obtained the decree long back in 2000 and cannot be deprived from enjoying the fruit of decree for so long period. We do not find any merit in the instant first miscellaneous appeal.

In the result, the First Miscellaneous Appeal is dismissed and the Civil Rule is discharged. The order ad-interim order of stay passed at the time of issuance of the Rule is vacated.

Faruque Ahmed, J:

I agree.