

Before J. V. Gupta, J.
NORTHERN CARRIERS (P) LTD.,—Appellant.

versus

M/S UNITED INDIA ASSURANCE CO. LTD. AND ANOTHER,—
Respondents.

First Appeal from Order No. 408 of 1982.

March 8, 1984

Code of Civil Procedure (V of 1908)—Order 9 Rule 13—Ex parte money decree obtained against defendant—Application for setting aside ex-parte decree made to Court—Court agreeing to set aside the decree on condition that the decretal amount be deposited—Such condition precedent—Whether onerous in nature—Application aforementioned—Whether liable to be dismissed.

Held, that in view of the provisions of Order 9 Rule 13 of the Code of Civil Procedure, 1908 *ex parte* decree could be set aside on such terms as to costs, payment into Court or such other terms as the Court may think fit. One of the terms can be that the decretal amount should be deposited in the Court so that the decretal amount may be available in case the suit is decreed after setting aside the said decree. Since there can be attachment before judgment, similarly, requiring the appellant to merely deposit the amount in Court before the *ex parte* money decree is set aside, cannot be said to be too onerous a condition within the meaning of Order 9 Rule 13. As such where the applicant refuses to deposit the amount of the decree in Court, the application for setting aside the *ex parte* decree is liable to be dismissed.

(Paras 3 & 4).

First Appeal from order of the court of Shri K. S. Bhullar, Sub Judge Ist Class, Chandigarh, dated the 14th June, 1982 dismissing the application of the appellants.

Laxmi Grover, Advocate, for the Appellant.

L. M. Suri, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This appeal is directed against the order of the Subordinate Judge I Class, Chandigarh, dated 14th June, 1982 whereby application for setting aside an *ex parte* decree filed on behalf of the defendant-appellant was dismissed.

(2) The plaintiffs, M/s United India Insurance Co. Ltd. and another, filed a suit for the recovery of Rs 37,297/19 paise against the defendant-appellant, M/s Northern Carriers Private Ltd.,

Jullundur. No one appeared on behalf of the defendant in spite of service. Thus, after recording *ex parte* evidence, the suit was ultimately decreed on 13th January, 1981. The application to set aside *ex parte* decree was filed on 4th February, 1981 which was contested by the plaintiff-respondent. Ultimately the trial Court found that no reasons had been given as to why the appearance of the defendant or his counsel was not made on 27th October, 1980 and therefore, the defendant had failed to prove sufficient reasons for setting aside *ex parte* decree. Consequently the application was dismissed. Dissatisfied with the same, the defendant has filed this appeal in this Court.

(3) Since it was a money-decree which was passed in the year 1981 and in view of the provisions of Order 9 Rule 13 of the Code of Civil Procedure Code (briefly the Code), *ex parte* decree could be set aside on such terms as to costs, payment into Court or otherwise as it thinks fit, the learned counsel for the defendant-appellant was asked on 14th February 1984, as to whether his client was prepared to deposit the decretal amount so that the *ex parte* decree be set aside on that condition and the case was adjourned to 1st March, 1984. On 1st March, 1984 the learned counsel for the appellant sought more time for getting instructions and the case was adjourned to 8th March, 1984. Today the learned counsel for the appellants stated at the Bar that his client was not prepared to deposit the decretal amount as a condition precedent to set aside the *ex parte* decree.

(4) As observed earlier, under Order 9 Rule 13 of the Code *ex parte* decree can be set aside on any given terms. One of the terms can be that the decretal amount should be deposited in Court so that the decretal amount may be available in case the suit is decreed after setting aside the *ex parte*. Since there can be attachment before judgment, similarly, requiring the appellant to merely deposit the amount in Court before the *ex-parte* money decree is set aside, cannot be said to be too onerous a condition within the meaning of Order 9 Rule 13 of the Code. The appellant, it is stated, is not prepared to deposit the amount, as a condition precedent and therefore, it is of no use to set aside the *ex parte* money decree, because even if it is set aside on that condition, it will serve no purpose as it is quite clear that the appellant is not prepared to fulfil the condition. In this situation, the appeal fails and is dismissed with costs.

H. S. B.