

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 11227 OF 2018
(Arising out of SLP(C)No.1491 of 2015)

KHODIYAAR ROLLING MILLS

Appellant(s)

VERSUS

PASCHIM GUJARAT VIJ COMPANY LTD.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) This appeal arises out of judgment and order dated 25th July, 2014 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.15454 of 2013 in and by which the High Court affirmed the order of the court below refusing to set aside the ex-parte decree passed by the trial court in Special Civil Suit No.56 of 2006.

(3) The appellant was running a mill and the respondent was a distributor of the electricity for the area including the mill in the premises of the appellant. There was a outstanding due of Rs.63,41,994.20. The respondent filed Special Civil Suit No.56 of 2006 for recovery of the said outstanding amount. In the said suit the appellant has not entered appearance and an

ex-parte decree was passed on 17th April, 2007. The appellant herein has filed an application under Order 9 Rule 13 of the C.P.C. to set aside the ex-parte decree which was filed with delay of twenty months and thirteen days. The Trial Court held that the appellant has not satisfactorily explained the delay of filing the said application under Order 9 Rule 13 of the C.P.C. and accordingly dismissed the same. In the revision the said order was affirmed by the High Court holding that the appellant had knowledge about passing of the ex-parte decree.

(4) We have heard Mr. Jay Savla, learned counsel appearing for the appellant and Mr. Pradeep Misra, learned counsel appearing for the respondent and also perused the impugned judgment.

(5) By order dated 8th January, 2015 this Court has directed the appellant to deposit a sum of Rs.70,00,000/- (Rupees Seventy Lakhs) with the respondent without prejudice to his contention. In compliance thereof, the appellant has deposited Rs.70,00,000/- (Rupees Seventy Lakhs) with the respondent. Since the appellant has shown his *bona fide* by depositing Rs.70,00,000/- (Rupees Seventy Lakhs), without going into the merits of the case, with a view to afford an opportunity of hearing to the appellant in the suit, the ex-parte decree (dated 17.4.2007) passed in Special Civil Suit NO.56 of 2006 is set aside and this appeal is allowed. The Trial Court is directed to restore Special Civil Suit NO.56 of 2006 to its original number and proceed with the same in accordance with

law. Since the said suit is of the year 2006 the same shall be decided as expeditiously as possible. The appellant shall file his written submission within four weeks from today. As observed by this Court by Order dated 8th January, 2015 the deposit of Rs.70,00,000/- (Rupees Seventy Lakhs) will be subject to the final outcome of the dispute between the parties.

(6) No costs.

.....J.
(R. BANUMATHI)

.....J.
(INDIRA BANERJEE)

NEW DELHI,
NOVEMBER 20, 2018.