

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3173 OF 2017
[@ SPECIAL LEAVE PETITION (C) NO. 13212 OF 2016]

ALBERT MORRIS

Appellant(s)

VERSUS

J.B. SIMONS

Respondent(s)

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. The appellant is aggrieved since his application under Order IX Rule 13 CPC has been dismissed by the Trial Court and the same has been upheld by the High Court in the First Appeal.

3. The main ground taken by the Trial Court as well as by the High Court is that along with the application for condonation of delay, the written statement was not filed. It is also stated that there was no application for condonation of delay in filing the application under Order IX Rule 13 CPC.

4. It is seen from the records that after the appellant was set ex-parte for not filing the written statement, the respondent herein (the plaintiff) was

granted time to pay the balance Court Fee and for ex-parte evidence. Thereafter, the case was adjourned by 10 days for payment of balance Court Fee. In our view, when the plaintiff could be shown the indulgence, the same equity should have been meted out to the appellant (defendant). After all, this is a suit for recovery of money and in our view, the Court should have put the parties at least to terms and then disposed of the matter on merits expeditiously.

5. In that view of the matter, we set aside the orders passed by the High Court and the Trial Court. The application filed under Order IX Rule 13 CPC stands allowed. The appellant is directed to file his written statement positively within two weeks from today. It is made clear that if the written statement is not filed within two weeks, as abovesaid, the dismissal order passed by the Trial Court will stand affirmed.

6. Having regard to the background of the case, we direct the appellant to pay costs of Rs. 25,000/- to the respondent. The costs shall be paid before filing of the written statement.

7. With the above observations and directions, the appeal is disposed of.

No costs.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

New Delhi;
February 23, 2017.



JUDGMENT