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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 04, 2009
Date of Order: February 16, 2010

+ CM(M)1325/2006 & CM Nos. 11533/2006, 257-258/2008

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16.02.2010

Sandeep Batra

...Petitioners

Through: Mr. Tiger Singh and Mr. Mr. Manmeet Singh, Advocates

Versus

G.E. Capital Services India

...Respondent

Through: Mr. Suhail Dutt, Mr. Azhar Alaam and Mr. Vikram Singh, Advocates

JUSTICE SHIV NARAYAN DHINGRA

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not? | Yes. |
| 3. | Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

1. By this petition, the petitioner has assailed an order dated 30th March, 2006 passed by learned trial court whereby an application of the petitioner under Order 37 Rule 4 CPC for setting aside an ex parte decree dated 18th August 2004 was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the respondent filed a suit under Order 37 of Civil Procedure Code against the petitioner herein and a notice of the suit under Order 37 CPC was served upon the petitioner. The petitioner put appearance in the Court and gave an address of service for effecting services of summons of the judgment. Thereafter, the respondent was to take steps for service of judgment of the petitioner. On one or two occasions, the respondent failed to take steps for service of summons of judgment and the suit was dismissed in default. On an application made by the respondent for restoration of the suit, the Court restored the suit and ordered for service of summons of judgment on the petitioner. The summons of judgment were sent to the petitioner through registered post as well as through ordinary post on the address furnished by petitioner. The ordinary process came back

with the report that the residence was locked and the petitioner had shifted from the address. However, registered letter was served upon the mother of the petitioner on the same address. No leave to defend application was moved by the petitioner. Trial court considered the case of respondent in light of documents and pleadings of the respondent and passed a decree in favour of the respondent on merits vide order dated 18th August, 2004. After the suit was decreed, the petitioner preferred an application for setting aside the decree. This application of the petitioner was dismissed vide the impugned order.

3. It was submitted by petitioner before trial Court that summons of the judgment were not properly served on the petitioner/ defendant and no prejudice would be caused to the plaintiff (respondent herein) if the decree was set aside. The trial court found that the petitioner had not disclosed any special circumstances as envisaged under Section 37 (4) of CPC for setting aside the decree nor the petitioner had raised any defence even in the application under Section 37(4) and dismissed the application.

4. The learned counsel for the petitioner has drawn my attention to the service report and submitted that when the premises was found locked and the petitioner had shifted, the registered cover could not have been served upon the petitioner and the trial court wrongly believed that the petitioner had been served with the summons of the judgment. This plea of the petitioner is belied by the documents filed by the petitioner himself. The petitioner had written a letter to the Court on 17th August 2004, just a day before passing the decree and this letter shows that the petitioner was served with the summons of the judgment at the address furnished by him. The contents of the said letter are as follows:

"respected sir, having come to know from my Delhi address that the plaintiff has reopened an already dismissed case by your Court vide order dated 18th March, 2004, the contents of summons directed by your Hon'ble Court which was incidentally not received by the authorized agent and were not communicated to me on time as I intended to fully contested the case. Please allow me sufficient time to take the necessary action."

5. This letter sent by the petitioner to the Court shows that the petitioner was not only maintaining his Delhi address but some of his family members were also living there. The petitioner alleged that he had shifted to Panchkula, but he had not informed the Court of his shifting to Panchkula. Some members of the family were living at Delhi who received the registered cover containing the summons of judgment and the petitioner was duly informed about the summons for judgment. This letter also shows that the petitioner was keeping a watch over the proceedings and was also having copies of the orders passed by the trial court on previous hearings. That is how he could enclose the copy of previous orders with his letter. The petitioner despite having received the summons for judgment did not file leave to defend and instead sent a letter to the Court. The receipt of this letter was noted on the Court record and this letter was sufficient to prove that the petitioner had duly received the summons of judgment but deliberately but did not file leave to defend.

6. Order 37 (3) Rule 2 CPC provides that all summons, notices and other judicial process required to be served upon the defendant shall be deemed to have been duly served on him if they are left at the address given by him for such service. Thus, if the registered cover is received at the address provided to Court by the petitioner by even an authorized person on behalf of petitioner, it would be considered as due service. If no one was found at the address and if the address was found locked, the process server would have been justified in serving the summons for judgment just by leaving the summons of judgment at the address furnished by the petitioner by putting the same under the doors. In the present case, the petitioner has been keeping a watch over the proceedings and was even aware of the previous orders, so it cannot be believed that he had not been served.

7. In *Rajni Kumar v Suresh Kumar Malhotra and another* (2003) 5 SCC 315, the Supreme Court observed as under:

"11. It is important to note here that the power under Rule 4 of Order 37 is not confined to setting aside the ex parte decree, it extends to

staying or setting aside the execution and giving leave to appear to the summons and to defend the suit. We may point out that as the very purpose of Order 37 is to ensure an expeditious hearing and disposal of the suit filed thereunder, Rule 4 empowers the court to grant leave to the defendant to appear to summons and defend the suit if the Court considers it reasonable so to do, on such terms as court thinks fit in addition to setting aside the decree. Where on an application, more than one among the specified reliefs may be granted by the Court all such reliefs must be claimed in one application. It is not permissible to claim such reliefs in successive petitions as it would be contrary to the letter and spirit of the provision. That is why where an application under Rule 4 of Order 37 is filed to set aside a decree either because the defendant did not appear in response to summons and limitation expired, or having appeared, did not apply for leave to defend the suit in the prescribed period, the court is empowered to grant leave to defendant to appear to the summons and to defend the suit in the same application. It is, therefore, not enough for the defendant to show special circumstances which prevented him from appearing or applying for leave to defend, he has also to show by affidavit or otherwise, facts which would entitle him leave to defend the suit. In this respect, Rule 4 of Order 37 is different from Rule 13 of Order 9.”

8. In view of above judgment, it was also incumbent upon the petitioner to disclose his defence in the application under Order 37 Rule 4 CPC. The petitioner did not disclose the defence. The plea taken by the petitioner that his termination had been set aside was also not tenable. The suit was filed by the respondent under Order 37 CPC based on the loan documents executed by the petitioner in favour of respondent. The petitioner had taken loans like personal loan, vehicle loan etc of various amounts from the respondent from 1997 to 1998 and executed agreements and promissory notes. These loans were given to the petitioner on concessional interest of 2% per annum since the petitioner was an employee of the respondent, with a provision that in case the services of petitioner come to an end, the market rate of interest shall be chargeable. The petitioner's services were terminated by the respondent vide letter dated 11th August 2000 on the ground that the petitioner had allegedly not reported for work after 31st March, 2000. The petitioner's challenge to his termination of service is in no way a defence to

non-repayment of the loan. The learned counsel for the petitioner argued that the petitioner had filed a suit challenging his termination and the suit was allowed by the court below. However, it was admitted by counsel for the petitioner that an appeal was preferred by the respondent herein which was allowed and the order of learned Civil Judge was set aside and the petitioner has preferred an RSA against the order of learned first Appellate Court. Thus, legality or illegality of termination had nothing to do with the repayment of loan. If the petitioner had any claim against the respondent regarding compensation or damages receivable from the respondent, that claim would be independent of the claim of the respondent based on a written contract regarding loans given by the respondent.

9. I find no force in the present petition. The petition is hereby dismissed with no orders as to costs.

February 16, 2010
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SHIV NARAYAN DHINGRA J.