

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Order delivered on: July 18, 2013

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C.R.P. No.124/2013 & C.M. No.10132/2013

SARDAR SUKHBIR SINGH, PROPRIETOR OF M/S AMAN
PRAKASHAN

..... Petitioner

Through Mr.S.M. Gupta, Adv.

versus

D.K.MALIK, PROPRIETOR OF M/S SHEEL PACKERS

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present revision petition under Section 115 read with Section 151 CPC against the order dated 3rd June, 2013 passed by the Addl. District Judge, Tis Hazari Courts, Delhi who rejected the application of the petitioner under Order XXXVII, Rule 4 CPC for setting aside the judgment and decree dated 15th October, 2012 passed in the suit.

2. Brief facts are that the respondent/plaintiff filed a suit under Order XXXVII CPC for recovery of ₹5,73,643.40p. along with interest @ 18% per annum with effect from 31st March, 2011 till its realization. It was contended in the plaint that the respondent and the petitioner/defendant were having business dealings for the last many years and during the business transactions, a sum of ₹5,73,643/- became due against the

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petitioner. The petitioner issued cheques towards part payment but the same were dishonoured by the bank.

3. Thereafter, the respondent issued notice to the petitioner on 13th December, 2011 and called upon to pay the outstanding amount but the petitioner failed to make the said payment. As the said payment was not made, the respondent filed the suit under Order XXXVII CPC.

4. Summons of appearance were served upon the petitioner/defendant in Form No.IV, Appendix-B CPC on 6th February, 2012 by ordinary process and also by Registered Post. The petitioner was required to enter appearance within 10 days from the date of service of summons and seek permission to contest the suit. But the petitioner entered appearance on 11th April, 2012. However, prior to the filing of the appearance, the respondent/plaintiff filed an application on 26th March, 2012 for passing of a decree, as the petitioner/defendant failed to enter appearance within 10 days of the service of summons of appearance.

5. After considering the submissions of the petitioner and the record of the case, the Addl. District Judge-06 (West), Tis Hazari Courts, Delhi decreed the suit in favour of the respondent and against the petitioner for the sum of ₹5,73,643.40p. along with interest @ 12% per annum with effect from 14th December, 2011 till the date of decree.

6. The petitioner thereafter filed an application under Order XXXVII, Rule 4 CPC for setting aside the *ex parte* judgment and decree dated 15th October, 2012, along with an application for stay. Notice of the said application was issued for 16th January, 2013. Both the parties addressed their submissions before the Court and by the impugned order dated 3rd June,

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2013 the application of the petitioner was dismissed. The said order has been challenged in the present revision petition.

7. The main contention of the petitioner in his application before the learned trial Court was that the petitioner came to know about the service of summons upon his ex-employee Mr. Harjeet Singh, Account Assistant-cum-Driver by Regd. AD post which were kept with him and the petitioner was not aware about the suit prior to the first week of April, 2012. Therefore, within 10 days, the petitioner entered his appearance on 11th April, 2012. It was also alleged by the petitioner that the summons were also served upon a lady Ms. Tarvinder Kaur who represented herself as the sister of the petitioner. However, there is no lady member by the said name in the family of the petitioner. As the petitioner was not personally served with the summons, therefore, the Court ought not to have passed the decree on account of non-filing of the appearance in time.

8. The learned trial Court after hearing argument of the petitioner has held in para 10 of the impugned order as under:-

“10. the present suit is a suit u/O 37 CPC which is a complete code in itself. It is also pertinent to mention that the defendant was served with summons for appearance not only by registered post but also by the Process Server. The defendant has not denied or disputed the correctness of his address mentioned in the AD Card or in the summons for appearance. He entered appearance on 11.04.2012 and never took the plea in the memo of appearance that he was served through his servant or that he had no sister named Ms. Tarvinder Kaur. The only plea taken by the defendant in memo of appearance was that he was served at his office address by registered post and the summons were without next date of hearing and defendant himself had enquired about the present case from the Court on 04.04.2012 and came

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to know that the case has been transferred to this Court and the next date of hearing is 11.04.2012. However, in the present application, entirely new story has been cooked up by the defendant in an attempt to wriggle out of the rigorous of law. There can be no disputes to the prepositions laid down by Hon'ble Supreme Court and various High Courts that the attempt should be made to serve the defendant personally but at the same time, the service on the defendant cannot be ignored when he has been properly served with the summons of the suit, though not personally. In the present case, the defendant was not only served by registered cover but also by ordinary process and hence, it does not lie in the mouth of the defendant to say that he was not served with the summons of the suit personally when no such plea was taken by the defendant at the time of filing application for entering appearance."

9. Having considered the pleadings as well as documents placed on the record and also having examined the summons received by the petitioner and AD Card placed on the record, I am of the considered view that the findings arrived in the impugned order are correct and there is no infirmity in the impugned order passed by the Addl. District Judge who had dismissed the application of the petitioner under Order XXXVII, Rule 4 CPC. There is no merit in the revision petition. The same is accordingly dismissed. Pending application also stands disposed of.


(MANMOHAN SINGH)
JUDGE

JULY 18, 2013