

* **HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO No.502/2012 & CM No.20721/2012 (Stay)**

Decided on : 17th September, 2013

RALSON CASTING LIMITED Appellant
Through: Mr.Tarun Dewan, Advocate.

Versus

NEW GLOBE LOGISTIK PVT.LTD. Respondents
Through: Mr.K.C.Joshi, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM No.20723/2013 (Condonation of Delay)

For the reasons stated in the application, the delay of 5 days in filing the instant appeal is condoned.

The application stands disposed of.

FAO No.502/2012 & CM No.20721/2012 (Stay)

1. This is an appeal against the order dated 04.08.2012 passed by the learned ADJ by virtue of which the application of the appellant/defendant No.1 under Order 9 Rule 13 CPC was dismissed.

2. Briefly stated the facts of the case are that the respondent filed a suit for recovery of ₹7,52,896/- against the present appellant. Notices

were ordered to be issued to the appellant. However, as the registered office as well as the factory premises of the appellant were situated in Ludhiana, the registered AD cover containing the notice which was sent to the appellant was received back with the report of refusal. The trial court took cognizance of the refusal report in its order dated 23.09.2004 and treated this as a valid service and waited till 2.10 PM whereafter the appellant/defendant no.1 was proceeded ex parte. The suit was decreed ex parte for a sum of ₹5,32,916/- along with interest @ 10% along with cost. Thereafter the appellant filed an application on 06.03.2011 for setting aside the *ex parte* judgment and decree stating that they learnt about the judgment and the decree dated 06.05.2005 only when the bailiff of the court of Additional District Judge, Ludhiana Courts came to the registered office of the appellant/defendant No.1 at C-29, Focal Point, Phase-2, Ludhiana for attachment of its properties. It is stated that thereafter they engaged a counsel, got the record inspected and obtained certified copies which were received by them on 22.03.2011 and they filed the application for setting aside the aforesaid *ex parte* judgment and decree. It has been stated that the appellant/defendant No.1 was never served and the report of refusal purported to have been presented to the

court was actually a procured report by the respondent/decreed holder. Accordingly, it was prayed that the judgment and the decree be set aside and they permitted to contest the matter.

3. The application of the appellant for setting aside the *ex parte* judgment and decree was contested by the respondent. The learned trial court dismissed the application by observing that the appellant had not been able to show any 'sufficient cause' for non appearance and the application made by the appellant that the report of refusal which was given by the postal authorities was a procured report, was not accepted. It was observed by the trial court that since the appellant had a registered office as well as the factory premises at Ludhiana which was out of Delhi therefore, the respondent as an individual did not have any wherewithal to manipulate the postal authorities so as to obtain a report of refusal. It has also been noted by the court that the issuance of the registered AD cover was not done by the respondent, but it is done by the court's registry and the respondent/plaintiff had only submitted the envelopes duly stamped in which the summons/notices were sent to the appellant.

4. Feeling aggrieved, the appellant preferred the present revision petition.

5. I have heard the learned counsel for the appellant.

6. It has been contended by the learned counsel for the appellant that there was absolutely no justification for the appellant to have absented thus not contesting the matter. More so, when they had allegedly a plausible defence if permitted to have been proved, the respondent would not have been able to get the *ex parte* judgment and decree against the appellant.

7. As regards the report of refusal, it was stated that though the appellant's case was that the respondent had played a fraud and procured the report, but even if it is assumed that the report was not procured and that fraud was not played by the respondent, certainly on one date itself by obtaining a report of refusal, the court ought not to have proceeded *ex parte* and it should have made another effort to serve the appellant by other means including by way of substituted service also. I am of the view because the respondent has not shown to this court that the process was sent to the appellant on very many occasions and that he was avoiding the service. Even the normal practice in courts is that when processes are directed to be sent to the defendant or the respondent

invariably it is ordered to be sent by all modes which includes regd. A.D. covers, courier, ordinary process etc. Nothing of this sort seems to have been done in the instant case, moreover, court cannot be oblivious to the fact also that some of postmen are not up to the mark and prepare report without even visiting the addresses on the letters. Therefore, the single report with the absence of attendant circumstances do not persuade the court to accept this report of refusal blindly.

8. It has been stated that the appellant is prepared to comply with such terms and conditions by way of payment of costs so that it is permitted to join the proceedings, file the written statement and contest the matter.

9. The learned counsel for the appellant has also relied upon the judgments in *Ram August Tewari and Ors. v. Bindeshwari Tewari and Ors.*; AIR 1972 Patna 142 and *Sita Ram v. Kalawati*; 1986 MPLJ 68.

10. I have gone through both these judgments and I do not consider that the judgments are helpful to the appellant. The appellant is admittedly a company having its registered office at C-29, Focal Point, Phase-2, Ludhiana and factory premises at G.T.Road, Doraha. The trial

court has noted that the notices were sent to the appellant by way of registered post and they were received back with the report of refusal. The respondent had hardly any occasion to manipulate the service report but still the fact of the matter remains that when the court orders service on a party, it is not only one mode but by various modes like courier, e.mail and by ordinary process. The purpose of this is to see that even if there is mischief played by either side in respect of one process still some process by the other mode be served on a party or the defendant as the case may be so that it is not open to them to contend that he did not receive the process or that he was not served meaning thereby the court should not be dependent on the report of only one process in order to proceed ex-parte against a party. It seems to look something more than a mere refusal. In the instant case, it has not been shown that except once when there is refusal there is anything on record to assume that it was avoiding the service. Therefore, I feel though the refusal has to be treated as service but in the peculiar facts and circumstances of this case when the service is denied on affidavit, the appellant ought to have been given an opportunity to contest the matter at least once though the same should be subject to the terms as the court may put.

11. I accordingly direct the appellant to deposit the sum of ₹5,32,916/- along with interest up to 31.07.2013 with the trial court before treating the *ex parte* judgment and decree having been set aside and permitting him to participate in the suit.

12. The aforesaid amount shall be deposited within a period of four weeks of the first date of appearance before the trial court. The said amount deposited should be kept in an FDR for such period as the court may deem proper and it will be subject to such orders as the court may deem fit.

13. With these directions, the appeal stands disposed of. The parties are directed to appear before the trial court on 4.10.2013 at 2 P.M. The trial court will give one opportunity to the appellant to file the written statement within a period of 30 days in terms of the provisions of CPC.

V.K. SHALI, J.

SEPTEMBER 17, 2013/dm