

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

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Judgment Reserved on: 3rd July, 2015
Judgment Delivered on: 22nd July, 2015

+ **FAO (OS) 323/2015 & CM No.11298/2015 (stay)**

GAGAN KAKKAR

.... Appellant

versus

DHARAMPAL CHHABRA

..... Respondent

Advocates who appeared in this case:

For the Appellants : Mr Mohit Madan, Advocate.

For the Respondent : Mr Ashish Mohan, Advocate.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM No.11299/2015 (exemption)

Exemption is allowed subject to all just exceptions.

FAO (OS) 323/2015 & CM No.11298/2015 (stay)

1. By this appeal, the appellant has impugned the order dated 20.04.2015 whereby the defence of the appellant has been struck out in terms of Order VI Rule 14A of the Code of Civil Procedure (hereinafter referred to as the Code). The respondent is the Plaintiff in the suit and the appellant is the defendant.

2. The respondent/plaintiff had filed a suit against the defendant alleging the defendant to be a tenant in the suit. The defendant filed his written statement claiming that the property had been purchased by his father by way of an agreement to sell.

3. Since the question involved is with regard to the compliance of the provisions of Order VI Rule 14A of the code, the merits of the contention of the either parties is not relevant for the purposes of the disposal of the present appeal. As such, the same are not being adverted to.

4. The admitted position is that the appellant/defendant in the suit was declared a proclaimed offender and is admittedly not available at the address mentioned in the affidavit accompanying the written statement. The respondent/plaintiff filed an application under order VI Rule 14A for striking out the defence of the defendant as the written statement filed by the defendant was accompanied with a false address.

5. The learned Single Judge has noted the contention of the counsel for the appellant that the appellant had been declared a proclaimed offender though it was contended that he had been wrongly declared a proclaimed offender. However, it was admitted on behalf of the appellant that the appellant was not available at the address mentioned in the affidavit accompanying the written statement. On a query from the learned Single Judge, the counsel had candidly stated that the defendant could not furnish his true and correct address as he had been declared a proclaimed offender. However, it was contended that non-mentioning of the correct address had no relevance to the proceedings as the defendant

had been regularly appearing through counsel and had been defending the suit without taking any adjournment. The Learned Single Judge has struck out the defence of the Appellant in terms of Order VI rule 14A of the Code.

6. Provisions of Order VI Rule 14 & 14A of the Code read as under:

14. Pleading to, be signed.— Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

14A. Address for service of notice.— (1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided there at.

(5) Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order— (a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or (b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up and defence.

(6) Where a suit is stayed or a defence is struck out under sub- rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) the Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such term as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.

7. Order VI Rule 14A mandates that every pleading filed by a party shall be accompanied by a statement in the prescribed form, signed as provided in Rule 14, regarding the address of the party. It stipulates that the address may be changed from time to time by lodging in Court a form duly filled by stating the new address and accompanied by a verified petition. The said address furnished is to be called the registered address and until duly changed is deemed to be the address of the party for the

purpose of service of processes in the suit or in any appeal etc. Order VI Rule 14A(5) lays down that where the registered address of a party is discovered by a Court to be incomplete, false or fictitious, the Court may either on its own motion or on an application by any party, in case such address is furnished by the plaintiff, stay the suit or in case such address is furnished by the defendant strike out his defence and he be placed in the same position as if he has not put up the defence.

8. The learned Single Judge by the impugned order noted that in case the defendant has been wrongly declared a proclaimed offender, the remedy of the defendant was to file appropriate proceedings challenging the order declaring him the proclaimed offender. The Court noticed that a party, which was absconding from justice, has a right to be heard provided the party cooperates with the judicial system and complies with its orders. The learned Single Judge relying on the decision of the Karnataka High Court in Yellapa (d) by LRs vs. Smt. Yashobai and Others, AIR 2004, Karnataka 388 has noticed that the provisions of Rule 14A are mandatory and postulate disastrous consequences.

9. Even before us, the address mentioned in the appeal is the same address at which, admittedly, the defendant/appellant is not available. The learned counsel for appellant has submitted that he is not in a position to furnish the correct address of the appellant.

10. In these circumstances, it is an admitted position that there is non-compliance with the provisions of Order VI Rule 14A and, as such, the consequences as laid down in Rule 14(5) would have to follow. The

address furnished by the Defendant/appellant is false and incorrect and he is not willing to furnish his correct address. In our view, the learned Single Judge was thus right in striking out the defence of the defendant/appellant. We find no infirmity in the order passed by the learned Single Judge in striking out the defence.

11. We may note that sub-rule 6 & 7 of Rule 14A lay down that where defence has been struck out in terms of sub-rule 5, the defendant after furnishing his true address may apply to the Court for an order to set aside the order striking out the defence and if the Court is satisfied that the party was prevented by sufficient cause from filing the true address at an appropriate time, the Court shall set aside the order striking out the defence on such terms as to costs or otherwise as it thinks fit. The appellant has a remedy provided under sub-Rule 6 & 7 to furnish the correct address and apply to the Court for setting aside the order striking out the defence.

12. In view of the above, we find no infirmity in the impugned order. The appeal is dismissed with no order as to costs. However, we make it clear that the dismissal of the appeal would not come in the way of the learned single judge in entertaining and disposing of an application on merits, if filed, by the appellant/defendant under Order VI rule 14A(6).

SANJEEV SACHDEVA, J

JULY 22, 2015
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BADAR DURREZ AHMED, J