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

+ **FAO(OS) 34/2016 & CM 4170/2016**

GENESIS INDUSTRIAL SOLUTION PRIVATE LIMITED & ANR

..... Appellants

Through: Mr Anand Singh, Adv. with Mr Harshal Tholia,
Adv.

versus

PREM SAGAR JAIN

..... Respondent

Through: Ms Anjali Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **26.04.2016**

1. We have heard the learned counsel for the parties. The present appeal has been filed against the order dated 17.11.2015 which, in turn, was an O.A. in respect of the order passed by the Joint Registrar on 10.08.2015 whereby the right of the appellants/defendants to file the written statement had been closed.

2. The circumstances in which the present appeal has been filed are as under:-

(i) The respondent/plaintiff filed a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) being CS (OS) 3740/2014 in November 2014. On 05.12.2014 when the matter was listed before court, directions were given for issuance of summons returnable on 27.02.2015. The registry issued the summons Order XXXVII CPC and the defendants were required to cause an appearance to be entered by them within 10 days from the service of the said summons. The summons clearly indicated as is the requirement under the prescribed form that in case the defendants cause an appearance to be entered, the plaintiff would thereafter serve upon the defendants a summons for judgment on the hearing of which the defendants would be entitled to move the court for leave to defend the suit.

(ii) After receipt of the summons, the appellants' counsel filed the memorandum of appearance on 16.01.2015.

(iii) Under normal circumstances, the appellants/defendants were not required to appear on 27.02.2015 when the suit was listed on the returnable date as the summons had been issued under the summary procedure of Order XXXVII. However, the learned counsel for the appellants/defendants appeared before the court on 27.02.2015 on which date, the Joint Registrar treated the said suit as an ordinary suit and directed the defendants/appellants to file the written statement within four weeks. This appearance, according to the learned counsel for the appellants was a mistake on the part of the counsel.

(iv) On the next date of hearing which was fixed before the Joint Registrar which was on 10.08.2015, since the appellants/defendants had not filed any written statement and the period of 90 days had expired, the Joint Registrar closed the right of the defendants to file the written statement. Being aggrieved by this order, the appellants preferred the said O.A. 350/2015 in which the impugned order dated 17.11.2015 has been passed whereby the order passed by the learned Joint Registrar dated 10.08.2015 has been upheld.

3. In the sequence of events narrated above, it is clear that no summons were issued for settlement of issues as is the usual practice in case of an ordinary suit. In fact, if the suit was to be treated as an ordinary suit, summons for settlement of issues in Form No.2 of Appendix B as applicable to Delhi was required to be served on the appellants/defendants. That Form clearly stipulates that the defendants have to file the written statement within 30 days of the service of summons. But, till date no such summons has been issued to the appellants/defendants. Consequently, it cannot be construed that the appellants/defendants have not filed their written statement despite service of summons as required under law.

4. In these circumstances, we put it to the learned counsel for the respondent/plaintiff as to whether the suit ought to be proceeded with as a summary suit or as an ordinary suit. The learned counsel for the respondent submitted that even the court in the first instance had treated the suit as an ordinary one although the registry had issued summons under the summary procedure of Order XXXVII CPC. The learned counsel submitted that it may be continued as an ordinary suit.

5. In the peculiar facts and circumstances of this case, we set aside the impugned order dated 17.11.2015 and also the order dated 10.08.2015 and direct that the written statement already filed by the appellants/defendants be taken on record. Since the suit has already been transferred to the Tis Hazari Courts, further direction for the progress of the suit shall be given by the concerned court. Since this was an error on the part of the registry, we are not imposing any costs on the appellants.

6. The appeal stands allowed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

APRIL 26, 2016
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