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HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. NO.119/2016

Decided on: 14th March, 2016

HARI MOHAN SHAD

..... Appellant

Through: Mr. K.S. Verma, Advocate

versus

INTERLINE GLOBAL LOGISTICS PVT. LTD..... Respondent

Through: Mr. Sarad Singhania, Advocate &
Ms. Rasmi Singhania, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. This is an appeal filed by the appellant against the order dated 25.09.2014 passed in Miscellaneous Application bearing No. M-1/2013 and order dated 23.04.2012 passed in Civil Suit No. 198/2011 titled *M/s. Interline Global Logistics Pvt. Ltd. vs. Hari Mohan Shad*.

2. Briefly stated the facts leading to filing of the present appeal are that the respondent, a private limited company, filed a suit bearing No. 198/2011 for recovery of pending bills for a sum of Rs.2,49,523/- along with interest @ 18 per cent. The summons of the suit were issued to the appellant/ defendant, who refused to accept the same. Accordingly, he was proceeded ex parte on 14.09.2011. The respondent/ plaintiff in

support of its case examined one Anil Kumar Negi as PW-1. After examination and proving of all the documents, the court passed an ex parte decree on 23.04.2012 for a sum of Rs.3,50,700/- being the principal amount of Rs. 2,49,523/- plus interest of Rs. 1,01,177/- as on the date of decree and further directing that it shall carry an interest @9 per cent per annum from the date of suit till realization.

3. After passing of the decree, the respondent/ plaintiff filed an execution petition on 20.09.2012. *Bailiff* went to the address stated in the main suit for execution of the decree against the appellant/ defendant but in order to avoid the execution and embarrassing situation, the appellant/defendant issued two cheques for payment of the decretal amount to the respondent/ plaintiff. After having issued the two cheques, the appellant/ defendant stopped the payment of these two cheques also because of which the cheques could not be honoured on presentation by the banker of the appellant. In the meantime, the appellant/ defendant filed an application under Order IX Rule 13 CPC on 1.11.2012 for setting aside the *ex-parte* decree. Another application was filed under Section 5 of the Limitation Act on 13.3.2013 for condonation of delay in filing the earlier application under Order IX Rule 13 CPC after objections were taken by respondent/plaintiff.

4. The learned court allowed the application under Section 5 of the limitation Act and condoned the delay in filing the application under Order IX Rule 13; though, in my considered view, the said application ought not to have been allowed because the application for setting aside the *ex parte* decree has to be filed within 30 days from the date of the

decree and the decree, in the instant case, was admittedly passed on 23.4.2012. Even if it is assumed that the period of limitation of 30 days is to be reckoned from 21.09.2012, i.e. when the appellant/ defendant is purported to have learnt about the passing of the decree because *bailiff* had visited his address and he had issued the two cheques for payment of decretal amount, still the application under Order IX Rule 13CPC was filed beyond the period of 30 days, since it was filed on 01.11.2012. It was after this realization that the appellant/ defendant filed an application after expiry of almost four months on 13.03.2013 seeking condonation of delay in filing above mentioned application. In this application seeking condonation of delay, no cogent reason has been given for the laxity shown by the appellant/ defendant in moving the application under Order IX Rule 13 CPC at least from the date when he learnt about passing of the decree which is the date on which the *bailiff* visited him. But the court took a lenient view and preferred to condone the delay.

5. The delay ought to be condoned under Section 5 of the Limitation Act only when a party is able to show '*sufficient cause*' and the word '*sufficient cause*' has been interpreted by the courts as a cause which is beyond the power and control of the party concerned and which prevents a party from appearing in court. Be that as it may, after having condoned the delay, the question arises regarding the consideration of the application of the appellant/ defendant under Order IX Rule 13 CPC for setting aside the *ex parte* decree.

6. Order IX Rule 13 CPC is very clear in its language that an *ex parte* decree can be set aside only if the defendant has not been served or if he

has been served then he must show that he was prevented by '*sufficient cause*' from appearing in court. In the instant case, the appellant had pitched his case that he was not served and this plea of the appellant has been disbelieved by the learned trial court by observing that the appellant was served by two methods; i.e. by the process server as well as by speed post. Therefore, the learned trial judge, while placing reliance on the judgment of the Delhi High Court in *I.D. Sharma vs. Kapil kohli* in C.M. (M) No. 578/2011, dismissed the application holding that appellant/defendant was not able to show any illegality or impropriety for setting aside the *ex parte* decree passed against him. It was also observed that the appellant/ defendant has not been able to show any '*sufficient cause*' or circumstance for his non-appearance which could warrant the setting aside of the *ex parte* decree.

7. I have heard the learned counsel for the appellant/ defendant. His plea before this court has been the same which has been taken before the learned trial judge that he was not served. I am not impressed by this *ex facie* false plea of the appellant/ defendant. The reason for observing that this was a totally false plea on the part of the appellant/ defendant, is on account of the fact that there is a report of the process server that the defendant had read the contents of the summons and thereafter refused to accept the same. So far as the envelope which was sent through speed post is concerned, the appellant/ defendant had refused to accept the same also. The Plea of the appellant / defendant that he never refused to accept the summons, does not inspire confidence in this court to believe him. The reason for this is that the appellant/ defendant seems to be a

dishonest person because of his conduct. It is a matter of fact recorded in the trial court's order that that when the bailiff went to the appellant/defendant's place of residence disclosed in the suit for execution of warrants, he issued two cheques in favour of the respondent/plaintiff for payment of decretal amount. Both these cheques were also dishonoured by the banker of the appellant/defendant not because of the insufficiency of funds or for some technical reason but for the fact that, the appellant/defendant himself had given instructions to his banker to stop the payment. This clearly showed that he is an unscrupulous person. A person who is dishonest and does not come to the court with clean hands, does not deserve the discretion to be exercised in his favour. Because of these reasons, I feel that the appellant/defendant is not a person who deserves any compassion of this court and acceptance of his plea that he was not served. He seems to have deliberately refused to receive the processes which were taken as valid service. It seems that he was harbouring an impression that in case he refuses the court will not do anything against him which has been completely belied by passing of the *ex parte* decree. The learned trial judge has also rightly placed reliance on the judgment of I.D. Sharma's case (Supra) where the court has also drawn a presumption under Section 27 of the General Clauses Act read with Section 114 illustration (f) of the Indian Evidence Act, 1872 to assume that if it is shown to the court that an envelope has been sent to the party by post and it is correctly addressed to him then the letter is presumed to have been delivered to him. In the instant case, not only the appellant/defendant had refused to accept summons received through

speed post but he had refused to accept the summons sent through the process server also. Therefore, I feel that the learned trial court was absolutely right in holding the refusal to be valid service in the instant case and proceed *ex parte* against him.

8. I do not find that there is any illegality or impropriety in the judgment passed by the learned trial court rejecting the application of the appellant/defendant under Order IX Rule 13 CPC. Accordingly, the appeal is dismissed as without any merit. The amount of money which has been deposited by the appellant /Defendant with the Registrar General of this court be released to the respondent/plaintiff along with interest which has accrued on the same. It shall be taken towards the adjustment of the decretal amount. So far as the balance decretal amount, if any, is concerned, the respondent/plaintiff is free to take such recourse as may be permissible in law.

V.K. SHALI,J.

MARCH, 14, 2016
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