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

+ RFA 692/2014 & CM No.21319/2014 (for stay)

L.K. SHARMA

..... Appellant

Through: Mr. K.G. Seth, Adv.

Versus

ANIL JAIN

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.03.2016**

1. The appeal impugns the judgment and decree dated 11th August, 2014 of the Court of Additional District Judge (ADJ)-01 (West), Tis Hazari Courts, Delhi decreeing Civil Suit No.262/2014 filed by the respondent under Order XXXVII of Civil Procedure Code, 1908 (CPC) for recovery of Rs.3,61,618/- with costs and simple interest @ 6% per annum from the date of filing of the suit till passing of the decree, owing to the failure of the appellant/defendant to enter appearance inspite of receipt of summons of appearance or to file leave to defend.

2. Notice of the appeal and of the application for condonation of five days delay in filing the appeal was issued and the Trial Court record requisitioned. Subsequently, vide order dated 7th August, 2015, subject to the appellant/defendant depositing Rs.1 lakh in this Court, execution was stayed. The said amount of Rs.1 lakh has also not been deposited.

3. Though the counsel for the respondent/plaintiff had appeared earlier but today none appears for the respondent/plaintiff.

4. Considering the fact that in the event of the appeal being allowed, the suit will have to go on, the appeal has been taken up for hearing today itself.

5. The learned ADJ in the impugned judgment has recorded that summons for appearance were served on the appellant on 25th March, 2014 but no appearance was entered; the appellant/defendant appeared on the next date of hearing before the Trial Court i.e. 6th May, 2014 but even then did not put up any appearance. It is further recorded that though the appellant/defendant along with the Advocate appeared thereafter also on 31st May, 2014 and it was the contention of the counsel for the respondent/plaintiff that no appearance having been filed, the suit was entitled to be decreed immediately but on the request of the appellant/defendant, the matter was adjourned to 9th July, 2014. On 9th July, 2014 the appellant/defendant again appeared along with the Advocate and filed *Vakalatnama* and the matter was adjourned to 28th July, 2014 and thereafter to 4th August, 2014 and 11th August, 2014, when finally it was decreed.

6. The Trial Court has held that, even if the appellant/defendant had filed an appearance at a later stage with an application under Section 5 of the Limitation Act, 1963 giving reasons therefor, the suit could have been proceeded with further; however the appellant/defendant having not done so inspite of numerous opportunities, the suit had to be decreed.

7. A perusal of the Trial Court record shows that the appellant/defendant was served with summons for appearance, besides on 25th March, 2014 also

on 5th May, 2014. As per law, a party when ordered to be served by several modes, the limitation for entering appearance / leave to defend etc. has to be computed from the date of last service. Even if we were to count the date of service as 5th May, 2014, the appellant/defendant though appeared before the Trial Court on 6th May, 2014 but did not file *Vakalatnama* till 9th July, 2014.

8. In these circumstances, no error can be found with the reasoning of the learned ADJ that the suit had to be decreed.

9. Without the appellant/defendant having entered appearance, this Court in appeal can only consider whether on the basis of the averments contained in the plaint and the documents filed therewith, the suit could be said to be maintainable under Order XXXVII of the CPC. I have perused the Trial Court record in this respect and do not find it to be so. The suit is based on a loan agreement in writing bearing the signatures of the appellant/defendant. It thus cannot be said that the suit did not lie under Order XXXVII of the CPC.

10. The appellant/defendant in the memorandum of appeal of course has set out various grounds *inter alia* to the effect that the signatures on the loan agreement were taken by deceit and no loan was obtained. However, in the absence of the appellant/defendant having entered appearance or having filed leave to defend, all the said pleas cannot be looked into.

11. There is thus no merit in the appeal.

12. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 18, 2016/bs..

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