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HIGH COURT OF DELHI AT NEW DELHI

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FAO 203/2015 & CM APPL.11642/2015

Decided on: 29th April, 2016

RAKHI JAIN & ORS.

..... Appellants

Through: Mr. Jitesh Talwani, Advocate

Versus

M/S. ADVANCE MAGAZINE PUBLISHERS INC. & ANR.

..... Respondents

Through: Ms. Anuradha Salhotra, Advocate with
Mr Zeeshan Khan, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.(Oral)

1. This is an appeal filed by the appellants/defendants against the order dated 16.04.2015 passed by the learned Additional District Judge, South Saket, New Delhi dismissing the application of the appellants under Order 9 Rule 13 CPC for setting aside the ex-parte decree.
2. Briefly stated that facts leading to the filing of the present appeal are that the respondents/plaintiffs are the owners of Advance Magazine Publishers Limited. They publish a magazine by the name of *Vogue* which is a well known fashion magazine. They filed a suit for permanent injunction, infringement and violation of trade mark against the three defendants, namely, the present

appellants, Ms. Rakhi Jain (Partner), Shri Sanjay Vaidh (Partner) and appellant/defendant No.3 M/s. Vague Mart Retails Limited Liability Partnership, having their registered office at B-3, Mohan Badi Surajpol Darvaja Ke Pas, Ward No.49, Jaipur, Rajasthan.

3. Summons for settlement of issues were issued to the appellants/defendants by registered post, ordinary post as well as through the office of District & Sessions Judge, Jaipur which were served on the appellants on the addresses given in the suit. Since the appellants did not appear, the trial court ordered service by way of publication in the local newspaper of Rajasthan Partika dated 28.09.2013. It may be pertinent here to mention that the appellants were also served through Smt. Pushpa Devi Jain, the mother of appellant No.1. Since the appellants did not put in appearance despite all three having been served consequently, they were proceeded ex-parte on 09.12.2013. The ex-parte evidence was fixed for 10.11.2014.
4. The Court passed the decree ex-parte. The ex-parte decree restrained the appellants from using term '*vogue*' in respect of their shop and clothes.
5. The appellants filed an application stating that they came to know about the filing of the case vide letter dated 14.11.2014 through one of their employees which was handed over to them on 25.11.2014. The appellants conducted the inspection of the record and since the appellants were claiming that they were living at 130, Sogani Bhawan, near Santoshi Mata Ka Mandir, Dhabhai Ji Ka Khuhra, Ramganj Bazar, Jaipur and that appellant No.1 was not

having good relations with her mother for the last two years while as appellant No.2 is a permanent residence of Mumbai at A-301, Aditya Building, Char Bangla, Mahada, Andheri (W), Mumbai-64, therefore, they did not learn about the pendency of the proceedings. They claimed that they were not served either in person or by way of publication and the same resulted in passing of an ex-parte decree.

6. The learned Court after calling for the reply of the respondents/plaintiffs rejected the application for setting aside the ex-parte decree and imposed also a cost of Rs.10,000/-. The appellants were also restrained vide order dated 13.11.2014 that they shall not use the mark invented by the respondents and further that the respondents deserve to be compensated. Accordingly, the application for setting aside the ex-parte decree was dismissed.
7. The appellants feelings aggrieved by the aforesaid order has preferred the present appeal.
8. I have heard the learned counsel for the appellants as well as the learned counsel for the respondents. I have also gone through the record.
9. The law regarding setting aside of ex-parte decree is well settled by the statute law as well as by way of judicial pronouncements. It has been laid down that there are only two contingencies in which the ex-parte decree may be set aside and these two situations are that either the appellant has not been served or that the appellant has been prevented by sufficient cause from contesting the matter.

10. In the instant case the appellants have claimed that they were not served and therefore the ex-parte decree against them deserves to be set aside and the case may be proceeded on merits. This argument of the appellants is not borne out on the record.
11. All the three appellants were duly served by through courier and speed post subsequent to passing of the ex-parte interim injunction order dated 12.02.2013. The Affidavit of service along with report of the courtier and speed post was duly filed by the respondents before the trial Court on 30.03.2013. The notice sent by the trial Court through registered post on 20.03.2013 was also delivered on all the appellants on 22.03.2013.
12. The process server of Jaipur Court who went for Dasti service on all the three appellants had given his report that he has served the Dasti notices on the registered address of Vogue Mart Retails Limited, LLP, i.e. defendant No.3 in the suit. The Dasti notices on behalf of the appellants were accepted by the mother Ms. Rakhi Jain, i.e. the first appellant on the registered address of the LLP.
13. While accepting the notice on behalf of Mr. Sanjay Vaidh, the appellant No.2, mother of Ms. Rakhi Jain has stated that Mr. Sanjay Vaidh works with Ms. Rakhi Jain as an officer of her company.
14. Hence all the three appellants were served with complete papers on 14.02.2013. Thereafter the appellants were further served by registered AD on 22.03.2013. The appellants were also served by Dasti notice by the process server of the District Court of Jaipur.

15. Since all the three appellants were served on the registered address of the LLP and as per Section 13 (2) of the Limited Liability Partnership Act, 2008 that constituted a valid service on all the appellants.
16. It is not the case of the appellants that the address on which the suit papers were served was not the registered address of the LLP. On the other hand, the learned counsel for the appellants had admitted that the address on which the suit papers were served was indeed the registered address of their LLP, i.e. the appellant No.3. The learned ADJ also directed the counsel for the appellants to file their LLP number in the Court vide order dated 01.01.2015. The counsel provided the LLP No. as AAA-0694, which is the LLP number of the third appellant in the suit. Hence, the appellants were deemed to be served on the registered address of the LLP as per Section 13 (2) of the Limited Liability Partnership Act, 2008.
17. In *V.K. Construction Works Limited & Ors. v. Abdul Khalique & Ors.*, 180 (2011) DLT 35, the Division Bench of this Court has held that *summons on a corporation may be served by leaving or sending it by post, addressed to the corporation at the registered office or if there is no registered office then on the place where the corporation carried on the business.*
18. It is to be further noted that when the appellants did not appear even after service of the suit papers upon them by all modes, the learned ADJ directed the appellants to have the notice published in the local newspaper having circulation at the place of appellants at

Jaipur. Accordingly the court notice was published in Rajaasthan Patrika dated 28.09.2013, having local circulation in Jaipur.

19. All possible efforts were made to secure the appearance of the appellants, however when they did not appear even after publication in the newspaper the trial Court proceeded to decide the matter *ex-parte*.
20. During the course of arguments, the respondents filed documents on 19.02.2016 showing that despite the judgment and decree dated 13.11.2014 passed by the learned ADJ, wherein a permanent injunction was passed against the appellant thereby restraining them from using the mark VOGUE, they are continuously using the said mark.
21. In *Indian Pilot's Guild vs. Air India Limited, FAO (OS) No.206/2015*, the Division Bench of this Court has held that *no litigant can avail of any discretionary remedy from the Court by willfully and flagrantly disobeying the orders of the Court*.
22. In view of the aforesaid facts and circumstances of the case, one thing is clear that the appellants after having been served were carrying the impression as if in case they do not put in appearance the Court will be handicapped in passing any adverse order against the appellants. Such a feeling on the appellants deserves to be curbed with heavy hand for causing delay in disposal of the matter by having been served and yet not permitting the Court to proceed ahead with the matter on merits thinking that the Court will be handicapped in passing the order against them.

23. I, therefore, feel that this is a fit case where the appeal deserves to be dismissed and no sympathy deserves to be shown to a litigant who does not come to the Court with clean hands and tries to hoodwink the Court by making false and frivolous averments that he has not been served. I accordingly dismiss the appeal.
24. The ex-parte order has already restrained the appellants from using the word 'vogue' in respect of its garments and the name title of the shop. I would only hope and trust that even after rejection of their application under Order 9 Rule 13 CPC, the appellants will be well advised to stop with the user or rather infringement of the trade mark and the violation of the trademark of the respondents of the word 'vogue', failing which the action will be initiated against the concerned zonal officer of the appellants.
25. With the aforesaid observations the appeal stands dismissed.
26. Pending application also stands disposed of.

APRIL 29, 2016/vk

V.K. SHALI, J.