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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1254/2015

M/S RACKBRO INDUSTRIAL CORPORATION & ANR

..... Petitioners

Through Mr.Thakur Sumit, Advocate.

versus

M/S SURAJ AUTO STORES & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% 14.01.2016

C.M. No.31712/2015 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

CM(M) 1254/2015& C.M. No.31711/2015

The Appellate Court i.e. the Court of Additional District Judge had vide order dated 29.7.2015 endorsed the finding returned by the Civil Judge dated 03.01.2015 and dismissed the application filed by the petitioner under Order IX Rule 13 CPC (vide which he had sought setting aside of the ex parte decree dated 30.8.2014).

Record has been perused.

Arguments have been appreciated.

The vehement submission of the learned counsel for the petitioner is that even as per the report of the process server, the petitioner firm had been served through a person by the name of Mool Chand who had

refused to accept the process on the ground that no responsible person from the firm was available. This is clear from the report of the process server. Mool Chand was only a servant and not being an adult member of the firm was not authorized to receive the summons on behalf of the firm. Attention has been drawn to the Order V Rule 15 CPC and explanation appended thereto. Submission being that a servant does not qualify as an adult member of the family and the finding of the two Courts below that the service had been effected upon the registered firm is an incorrect finding. The summons not having been served upon the petitioner firm, the ex parte judgment is liable to be set aside.

This Court is not in agreement with the submission made by the learned counsel for the petitioner. Apart from the fact that there two concurrent findings of fact which had been delivered against the petitioner, the finding returned by the two Courts below do not call for any interference. Order V Rule 15 CPC is not applicable to the present factual scenario.

Order V Rule 15 envisages a situation where service may be effected on an adult member of the family where either defendant or his duly authorized agent is absent. It is in this rule that the explanation provides that a servant is not a member of the family within the meaning of this rule. Order V Rule 17 lays down the procedure when the defendant refuses to accept service or cannot be found. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his

residence and there is no likelihood of his being found at the residence within a reasonable time, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business and a report to that effect has to be filed. Order V Rule 19 of the CPC provides that where the summons have been returned under Rule 17 the Court shall examine the serving officer on oath only if the return of the process under that rule have not been verified by the affidavit of the serving officer.

Admittedly, in the present case the process server had given his affidavit stating that the adult member of the family could not be found at the premises and Mool Chand had refused to receive the summons on behalf of the firm. Thereafter the summons were affixed on the premises. This was a valid service. This Court also notes that the submission that Mool Chand was a servant is made before this Court; this was never a pleading in the two Courts below. This fact has also been candidly admitted by learned counsel for the learned counsel for the petitioner.

Record shows that the summons had been sent to the petitioner through speed post. They had been returned back on 02.11.2013 wherein the post man had noted that despite repeated visits and intimation the owner of the company was not met and the employee of the company were not willing to accept the summons. A same report was obtained on the registered cover sent to the petitioner. The process server had reported that a person Mool Chand had met him who refused to accept the summons on the ground that no responsible person from the firm was

available. Petitioner was accordingly served by way of affixation. This was under the orders of the Court. Fresh summons were again ordered on 29.3.2014 with a direction to the process server to affix summons in case of non-availability of the petitioner. Speed post sent to the petitioner was received back with remark as noted supra. On 8.5.2014 the report of the process server was to the effect that he had affixed the summons at the premises (which was under the directions of the Court). Service has been effected at Okhla address of the petitioner i.e.F-29/6, Okhla Industrial Area. The Trial Court had correctly noted that even in the vakalatnam filed by the learned counsel for the petitioner; the same address has been mentioned. The petitioner having filed a fresh address of Kashmere Gate in the present petition was only to cover up this lapse, his original address of Okhla Industrial Area remained undisturbed. Valid service having been effected upon the petitioner, the petitioner was rightly proceeded ex parte on 02.08.2014 pursuant to which ex parte arguments were heard and an ex parte judgment was passed.

This Court has been informed that the present suit is a suit for recovery. The submission noted by the Trial Court that this was a delaying tactic; the defendant was watching the proceedings and he was trying to ward off his liability is also the submission which cannot be overlooked.

This Court is sitting in its powers of superintendence under Article 227 of the Constitution. Unless and until there is a patent illegality or a perversity by the Courts below this Court is not to interfere with the judgment.

The judgment relied upon by the learned counsel for the petitioner

reported as 2007 IV AD (Delhi) 367 Renu Sharma & Anr.(Smt) Vs. Titan Industries Ltd. & Anr. FAO (OS) No.38/2007 is wholly inapplicable to the present scenario. In that case the provisions of Order V Rule 17 CPC had not been complied with.

This petition is without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 14, 2016

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