

\$~A-9

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

+ CM(M) 3/2016

VIJENDER NAGAR

..... Petitioner

Through Mr.Sunil Dalal and Ms.Garima Goel,
Advocates

versus

GURCHARAN SINGH

..... Respondent

Through Mr.Rishi Pal, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

25.01.2017

%

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 24.11.2015 by which summons for appearance in form-IV, Appendix-B CPC were issued by converting an ordinary suit into a summary suit under Order 37 CPC. The petition also challenges the order dated 12.1.2016 whereby a review against order dated 24.11.2015 was dismissed.

2. The respondent filed a suit for recovery of Rs.3,00,000/- under Order 37 CPC. The suit is said to be based on a promissory note, receipt, undertaking etc. However, when the matter came up before the court on 21.8.2015 the court issued summons for settlement of issues to the defendant/petitioner. On the next date, namely, on 19.9.2015 as the petitioner was un-served fresh summons for ordinary suit was issued to the petitioner returnable for 3.10.2015. On 3.10.2015 again fresh summons were issued. On 24.11.2015 when the matter was listed the petitioners entered appearance and filed their written statement. It is at that stage that the

respondent took an objection that the suit is filed under Order 37 CPC but is inadvertently being treated as an ordinary suit. On the oral submission of the respondent, the trial court accepted the submission and directed issue of summons for the appearance under the prescribed procedure for a summary suit to the petitioners on filing of process fee.

3. I have heard learned counsel for the parties.

4. It is clear that when on the first date i.e. 21.8.2015 summons were sent to the petitioners they were sent as summons in an ordinary suit. Rightly or wrongly the respondents did not challenge the said order though there was an error in issuing summons in the manner it was done.

5. At this stage, petitioners have already entered appearance and filed their written statement. It would be too late to set the clock back. In fact any such order would only result in delay in disposal of the suit which will prejudice the respondent.

6. In the interest of justice, liberty is granted to the respondent to instead file an application under Order 12 Rule 6 CPC. In case such an application is filed the trial court shall deal with the same as per law but on a priority basis uninfluenced by any observations made by this court herein.

7. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

JANUARY 25, 2017

n