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

+ C.R.P. 72/2017

M/S REALM MEDIA SOLUTIONS  
PVT LTD AND ORS

..... Petitioners

Through Mr.Romy Chacko, Mr.V Arun Mudgal  
and Ms. Rahat Bansal, Advocates  
versus

M/S QUANTUM OUTDOORS

..... Respondent

Through Mr.Maninder Jeet Singh and  
Mr.Gagan Gupta, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

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**30.03.2017**

**CAVEAT 270/2017**

Since the counsel for the respondent has entered appearance, the caveat stands discharged.

**CM No. 11400/2017 (exemption)**

Allowed subject to just exceptions

**C.R.P. 72/2017 and CM No. 11399/2017 (Stay)**

1. By the present petition under Section 115 CPC, the petitioners seek to impugn the order dated 17.12.2016 by which his application filed under Order 37 Rule 4 CPC for setting aside ex parte decree dated 09.09.2015 was dismissed.

2. The respondent had filed the present suit for recovery of Rs.19,04,135/- based on certain goods said to have been supplied to the petitioners. Invoices had been raised on the petitioners. Certain payments

have also been received by the respondent.

3. As per the service report, service was affected on the petitioners. As none appeared, the suit was decreed on 09.09.2015.

4. The petitioners have thereafter sometime in April 2016 have moved an application under Order 37 Rule 4 CPC for setting aside the ex parte decree. The application was also accompanied by another application under Section 5 of the Limitation Act for condonation of delay in filing of the accompanying application. The stand taken in the application under Order 37 Rule 4 CPC is that petitioner No.1 had shifted its registered office from Connaught Place to Kotla Mubarakpur in December 2014. Hence, it is the stand that no service has been affected on petitioner No.1 at its registered office. Regarding service on Sh.Dharamvir Singh, Director of petitioner No.1 who is also defendant No.4 in the suit, it is urged that the same was served on one Sh.Harman Kukretta. It is urged that the summons had to be duly served on the defendant himself or on his agent who is authorised on his behalf. Hence, the procedure for service of summons was not properly affected and accordingly, the defendant could not appear.

5. The trial court by the impugned order noted that the application for setting aside the ex parte decree has been filed six months after passing of the decree. The allegations stated regarding the delay i.e. ailment/business are vague and routine type and no sufficient cause has been set out for not filing the application within time. It also noted that as per the settled law while moving an application under Order 37 Rule 4 CPC , the applicant is obliged to show sufficient cause as to why the ex parte decree be set aside which would amount to showing existence of special circumstances. As the same was not pleaded in the application, the trial court dismissed the

application.

6. I have learned counsel for the parties.

7. Learned counsel for the petitioners submits that no proper and effective service has been affected on the petitioners. This contention is controverted by the learned counsel for the respondent who relies upon the averments made by the petitioners in their application under Section 5 of the Limitation Act to submit that service has been affected.

8. There are two facts which stand out. Firstly, though a specific plea has been taken by the petitioners that petitioner No.1 Company has not been properly served, this aspect has not been dealt with by the trial court in the impugned order. The trial court has gone on the assumption that the service was affected on the petitioners. Even the plea of the petitioners that defendant No.4 /Sh.Dharamvir Singh who is the Director was not served properly at his residential address has not been dealt with by the trial court. To that extent, in my opinion the impugned order suffers from irregularity.

9. The second aspect is as to whether the petitioners have shown existence special circumstances for setting aside the decree. A perusal of the application filed by the petitioners under Order 37 Rule 4 CPC would show that there is no averment showing existence of special circumstances.

10. However, keeping in view that the trial court has failed to deal with the issue as to whether service was affected on the petitioners, I quash the impugned order dated 17.12.2016. The parties are remanded back to the trial court for fresh adjudication of the applications of the petitioners under Order 37 Rule 4 CPC and also under Section 5 of the Limitation Act.

11. In the interest of justice, the petitioners are given one last opportunity to file an additional affidavit in support of their application to show

existence of special circumstances, if any, for setting aside the ex parte decree. In case such an additional affidavit is filed, the trial court may deal with the same as per law uninfluenced by any observations made herein.

12. At this stage, learned counsel for the parties submit that in case the petitioners deposit a total sum of Rs.9 lacs before the trial court within two weeks from today, the respondent would have no objection in case the ex parte decree is set aside and the petitioners are granted leave to defend.

13. In view of the above submissions of the learned counsel for the parties, the ex parte decree dated 09.09.2015 is set aside subject to the petitioners depositing a sum of Rs.9 lacs within two weeks from the date of receipt of a copy of this order. If the amount is deposited, the petitioner will also be entitled to leave to defend. The petitioners will also file their written statement within 30 days from the date of receipt of a copy of this order. The money so deposited by the petitioner will be subject to further orders of this trial court.

14. The parties to appear before the trial court on 27.04.2017. The trial court is requested to expeditiously dispose of the suit. No adjournment should ordinarily be given to any of the parties except for emergent reasons.

15. In view of the above, the present petition stands disposed of. All pending applications also stand disposed of.

**JAYANT NATH, J**

**MARCH 30, 2017/rb**