

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

+ **RFA No. 769/2017 & CM No.32623/2017**

% **8th September, 2017**

SURJEET SINGH Appellant

Through: Mr. Abhay Kumar, Adv.

versus

BAL KISHAN GOEL Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) challenging the impugned order dated 27.5.2017 of the trial court whereby the trial court has dismissed the application under Order XXXVII Rule 4 CPC filed by the appellant/defendant and refused to set aside the judgment and decree dated 22.12.2015 under Order XXXVII CPC for a sum of Rs.9 lacs based on the dishonored cheque. Suit was decreed as appearance was not entered by the appellant/defendant.

2. Appellant/defendant does not dispute that he was served in the suit but his case pleaded was that he had gone on account of death of his relative to his native village at Phagwada (Punjab) where he fell ill, and after coming back the summons which were received in the suit were lost. Appellant/defendant pleads that he came to know about the suit only when he received notice of the execution proceedings.

3. Trial court has dismissed the application under Order XXXVII Rule 4 CPC, and the stand of the appellant/defendant, in terms of the following paras of the impugned judgment:-

“10. The foremost question is whether the applicant/defendant has been able to lay down cogent grounds for setting aside the judgment and decree dt. 22.12.2015 and for condonation of delay in putting in appearance. According to him, he had received the summons of the suit on 06.11.2015, and thereafter, he went to Phagwada (Punjab) to attend the last rites of his relative who had expired there. He further submitted that he became ill at that place and could not return to Delhi and file appearance. It is to be appreciated that the applicant/defendant has not mentioned the name or the nature of relation of the said relative who expired nor has mentioned any date when he had died. He has also failed to mention any date as to when he left for Phagwada from Delhi or the date when the last rites of the said relative were performed. The applicant has further failed to mention any date when he fell ill, nature of his illness or the date when he became well and returned to Delhi. Apart from that, no supporting documents have been placed on record to substantiate his plea as aforesaid, such as any receipt of the cremation ground, journey tickets from Delhi to Phagwada or back, any medical prescription etc. Hence, the pleas taken by the applicant/defendant are vague and cannot be accepted even on the face of it.

11. Similarly, the other plea taken by him that he lost the summons on reaching Delhi can also be accepted. He has not shown as to where and in whose custody he had kept the summons. He has also not shown as to what

efforts he made to trace the summons. He has failed to mention if he tried to approach his Counsel to seek help to trace the court from where the summons were issued. In case he would have made any sincere efforts, he would have definitely come to know about the pendency of the suit and he name of the Court. As per his averments, he kept silent for almost about an year till 21.9.2016 when his Counsel inspected the case file on receipt of notice of execution. It only shows his complete lackadaisical approach to the matter. Hence, I am of the view that the applicant/defendant has failed to show sufficient cause with any justifiable and cogent ground to condone the delay in filing appeal and to set aside the decree dt. 22.12.2015."

(underlining added)

4. I completely agree with the aforesaid reasoning and conclusions of the trial court because the appellant/defendant failed to give the name of the relative who had expired as also the date when the so called relative had expired. Also, no dates were given as to when appellant/defendant left for Punjab from Delhi and when he came back or when the last rites of the relative were performed. Appellant/defendant failed to substantiate his pleas including by filing any journey ticket or medical prescription of his alleged illness etc. The plea of the appellant/defendant was also disbelieved by the trial court that summons were lost because appellant/defendant failed to show in whose custody the summons were and also that appellant/defendant failed to make any efforts for tracing out from the filing counter of the District Courts as regards the suit which was filed and that he surprisingly kept silent for a year.

5. There is no ground to interfere in the impugned judgment.

6. Dismissed.

SEPTEMBER 08, 2017/ib

VALMIKI J. MEHTA, J

