

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.1258 of 2016 (O&M)

Date of decision: 26.03.2018

Satbir Singh @ Sehdev Singh through LRs

..... Appellant

Versus

Raj Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.K. Tuteja, Advocate
for the appellant.

Mr. Kulvir Narwal, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant through his legal heirs is in the regular second appeal against the judgments passed by the Courts below.

Plaintiff filed a suit for recovery of Rs.2,50,000/- under Order 37 of the Code of Civil Procedure. As prescribed, the summons were sent to the defendant for 17.07.2007. The summons were allegedly served upon him but he did not choose to appear. The plaintiff has applied for summons of judgments. A note under the order dated 17.07.2007 shows that the defendant was served through wife on 13.11.2007, although, the order dated 13.11.2007 records that summons of judgment have been received unserved. On 13.07.2007, itself the Court further records that the defendant has moved an application seeking adjournment on the ground that he has filed an application for setting aside the ex parte order. The ex parte order was set aside on 27.01.2010. It is not disputed that no application for summons for

judgment supported by an affidavit was filed. The procedure adopted by the Court was not in consonance with the Order 37, Code of Civil Procedure. Order 37, Rule 3 sub-rule (4) prescribes that if the defendant enters an appearance, the plaintiff shall thereafter serve the defendant a summons for judgment in form 4-A in appendix 'B' or such other form as may be prescribed from time to time returnable not less than 10 days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief, there is no defence in the suit. Admittedly neither any application for summons for judgments was filed nor the affidavit as required was submitted. Although, learned counsel for the respondent has pointed out that the summons for judgment on the prescribed form were issued to the defendant. Learned counsel was requested to point out where is the affidavit as required under Order 37. He frankly admitted that there is no affidavit.

In view thereof, the orders passed by the Courts below are set aside.

Learned trial Court is requested to re-decide the matter after following the procedure prescribed. Since the suit for recovery has been filed under Order 37, the learned trial Court is requested to decide the suit, within a period of three months, from the date of receipt of a certified copy of this order.

Appeal is disposed of.

(ANIL KSHETARPAL)
JUDGE

26.03.2018
Dinesh Bansal

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No