

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

+ **RFA No. 322/2018**

% **18th April, 2018**

VIKAS KUMAR Appellant
Through: Mr. G.D.Sharma, Advocate.

versus

PURSHOTAM VERMA Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.15023/2018 (Exemption)

Exemption allowed subject to just exceptions

CM stands disposed of.

RFA No. 322/2018 & CM No. 15022/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit, impugning the order of the Trial Court dated 24.8.2017, by which the trial court has decreed the Order XXXVII CPC suit filed by the respondent/plaintiff, on account of non-filing of the application for

leave to defend. It is not disputed on behalf of the appellant/defendant that no application for leave to defend was filed.

2. The case of the appellant/defendant is that summons for judgment which were issued to the appellant/defendant have not been received by the wife of the appellant/defendant Smt. Gita as stated in the summons issued by the Court as also on the AD card of the registered cover in which summons were sent.

3. This Court notes that the appellant/defendant had already filed an application under Order XXXVII Rule 4 CPC after decree of the suit in terms of the impugned order dated 24.8.2017, and this application under Order XXXVII Rule 4 CPC was dismissed by the trial court in terms of its order dated 27.1.2018 observing that admittedly the name of the wife of the appellant/defendant is Smt. Gita and the signatures of the person who received the summons of the Court as also the registered cover containing the AD card is by one Smt. Gita, with the fact that address as given in the summons and Registered AD post is admittedly the address of the appellant/defendant. This order dated 27.1.2018 reads as under:-

“27.01.2018

Present: Sh. G.D. Sharma, Ld. Counsel for applicant.

I heard arguments on the application u/o 37 rule 4 CPC. As per rule 4 of order 37 CPC, the court may, under special circumstances **“set aside the decree and if necessary stay or set aside the execution and may give leave to defend to appear to the summons and to defend the suit if it seems reasonable to the court to do so and on such terms as the court thinks fit”**. Therefore, it is clear that this provision can only be invoked under special circumstances.

It is submitted by Ld Counsel for applicant/defendant that the defendant has not received any summons for judgment as prescribed under special rule 4 of rule 3 of order 37 CPC till November, 2017.

I perused the record. As per record, summons for judgment was sent to the defendant on his address i.e 9371, Goshala Road, Dhobiwali Gali, Karol Bagh, New Delhi-5 and his wife met at the given address and on enquiry the name of the wife of the defendant was revealed as Gita and she received the summons for judgment on 17.07.2017. It is not in dispute that the name of the wife of the defendant is Gita. AD card also received back with the signatures of Gita. Therefore, I am of the view that the summons for judgment was received by Gita, Wife of the defendant on 17.07.2017. The defendant did not file leave to defend application within time and the decree under order 37 CPC was passed on 24.08.2017 even after more than one month. It is clear that the defendant did not appear and file leave to defend application within time. I am of the view that there is no circumstances what to say of special circumstances, on the basis of which provision of rule 4 of order 37 CPC may be invoked. Therefore, the application is dismissed.

File be consigned to record room.”

4. Learned counsel for the appellant/defendant argued that the summons for judgment are not served upon the appellant/defendant firstly because the address which is given by the process server in his report does not contain an expression ‘Karol Bagh New Delhi’ at the end of the expressions "Vikas Kumar son of Sh. Joginder Singh, 9371, Gaushala Road, Dhobi Wali Gali", and

secondly because of the fact that whereas on the summons the signatures of Smt. Gita appear in Hindi but on the AD card the signatures are in English. It is also argued that there is no identification of Smt. Geeta by any witness.

5. Accordingly, it is argued that since appellant/defendant was not served with the summons of judgment, the Order XXXVII CPC suit could not be decreed for not filing the leave to defend application.

6. I may note that the subject suit is filed on the basis of dishonoured cheques of the total amount of Rs.5 lacs. The subject cheques were given by the respondent/plaintiff as advance payment amount to the appellant/defendant for purchasing the property of the appellant/defendant by the respondent/plaintiff, but since the appellant/defendant failed to complete the transaction, hence on asking for returning back of the amount, four cheques totaling to Rs.5 lacs were issued by the appellant/defendant in favour of the respondent/plaintiff, and which cheques on presentation were dishonoured.

7. The first argument urged on behalf of the appellant/defendant that the complete address is not mentioned because of the absence of the expression “Karol Bagh New Delhi” on the summons is a misconceived argument because the address not containing the expression “Karol Bagh New Delhi” is not on the summons but on the report of the process server. On the summons the complete address is given and which is seen from running Page 75 of this appeal paper book, and after which document at Page 75 the report of the process server is there at Page 76 which does not mention the expression “Karol Bagh”. Therefore, appellant/defendant cannot argue that summons were not issued correctly and at the complete address.

8. The argument of the learned counsel for the appellant/defendant that service by AD card should be disbelieved because in the summons of the Court the signatures are in Hindi whereas in AD card the signatures are in English, but this argument overlooks the fact that it is not the case of the appellant/defendant that his wife only signs in Hindi and not in English also, with the fact that admittedly the address which is on the registered cover was the correct

and complete address of the appellant/defendant. This Court refuses to accept the tactics of the appellant/defendant in an Order XXXVII suit for recovery of money in trying to avoid making of the due payment under the dishonored cheques on flimsy grounds of signatures of the wife of the appellant/defendant appearing in Hindi on the summons and English on the AD card.

9. The argument of appellant/defendant that signatures on the summons of his wife Smt. Gita had to be identified by a witness is an argument without substance as there is no provision of requiring identification/attestation of signatures of a person who receives summons from the Court.

10. There is no merit in the appeal. Dismissed.

APRIL 18, 2018/ib

VALMIKI J. MEHTA, J