

CR No.7886 of 2018 (O&M)
Date of Decision: 20.08.2019

M/s Radhika Polymers

.....Petitioner

Versus

M/s Varun Plastics and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. O.P. Sharma, Advocate
for the petitioner.**NIRMALJIT KAUR, J.**

The present revision petition has been filed against the order dated 15.07.2016 passed by the Additional District Judge, Patiala (for short, the Appellate Court) as well as order dated 14.07.2015 passed by the Civil Judge (Senior Division), Gurgaon (for short, the trial Court), vide which, the application for setting aside the ex-parte order dated 22.05.2007 and judgment and decree dated 01.08.2008 was dismissed as also for setting aside the judgment and decree dated 01.08.2008.

While praying for setting aside the impugned orders and decree as mentioned above, learned counsel for the petitioner submitted that neither the petitioner nor respondent Nos.2 and 3 are the residents at the addresses as mentioned in the suit nor the company is having its office at the given address in the plaint. The company was described to be represented through partners but there was no mention of the name of any partner in the plaint itself. Even, the name of respondent Nos.2 and 3 have been mentioned as Ms Sandhya Bhushan wife of I.J. Bhushan and Sh. Vineet Bhushan son of I.J. Bhushan, whereas, respondent Nos.2 and 3 are Ms Sandhya Bhutani wife of I.J. Bhutani and Vineet Bhutani son of I.J. Bhutani. As such, the

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and had no intimation about the pendency of the suit filed against them. It is further stated that on one occasion, Mr. B.R. Bhutani was served but it was without copy of the suit. Hence, it cannot be said to be proper service.

Heard.

The suit for recovery of Rs.3,25,322/- was filed by the plaintiff/respondent No.1 against the petitioner. This Court almost thought that the petitioner has been wronged till on perusal of the impugned orders it came to light that the conduct of the petitioner not to appear in Court was deliberate and intentional with sole malafide intention to delay the proceedings. The petitioner was aware about the proceedings of the case from the very beginning. It was also found from the record of the Courts below that the summons of the case were sent at the correct address of the applicant i.e. House No.1068, Sector-4, Gurgaon by the Court. Mr. I.J. Bhutani, the partner of the applicant-defendant No.1 firm and was duly served with the summons of the case on 23.3.2007 for the hearing of the case on 22.5.2007 which was found to be attached with the case file. The said summons was issued by the court to applicant-defendant No.1 M/s Radhika Polymers through its partner, House No.1068, Sector-4, Gurgaon. A perusal of the said summons and the report of the Process Server clearly proves that Mr. I.J. Bhutani was personally served with the summons of the case and he had himself received the intimation of the case from Process Server but returned the summons under the pretext that copy of the plaint was not enclosed.

Thus, the petitioner was required to put in appearance in the Court on 22.05.2007 but he did not appear even after the passing of the order dated 22.05.2007.

The para No.9 of the judgment passed by the Appellate Court is relevant, which is reproduced as under:-

“The applicant-defendant has filed an application under Order 9 Rule 13 C.P.C. raising grievance that defendant No.1 was not duly served. The address of defendant was given as 168, Sector-4, Urban Estate, Gurgaon, whereas, the partners were residing in H.No.1068, Sector-4, Urban Estate, Gurgaon. The perusal of summons Ex.RW1/A, Ex.RW1/B and Ex.RW1/C reveals that they were issued on address H.No.1068, Sector-4, Urban Estate, Gurgaon. There is endorsement on the back of summons Ex.RW1/A in hand of the applicant himself. When confronted with the said endorsement, AW1 I.J. Bhutani (applicant) has admitted that Mark-A on Ex.RW1/A is in his hand. The noting 'Mark A' on Ex.RW1/A read as under:-

“Please attach copy of complaint which is not attached. Also look into that the complaint is against firm only. From where the address is taken and how names of partners are included.”

Not only this on summons issued to defendant No.2 the applicant himself has signed the same with noting that no person with this name. On summons Ex.RW1/C issued to defendant No.3 it was reported by the serving official that his driver met and went inside and stated that he was not available. On hearing about the summons, defendant No.3 absconded. RW1 Parkash Singh, process server has categorically stated that the applicant I.J. Bhutani had duly received the summons and has proved the reports Ex.RW1/A, Ex.RW1/B and Ex.RW1/C. Thus, it cannot be

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said that there was no service of summons upon the applicant. Defendant No.1 was duly served and there was no reason for the applicant not to appear in the court.”

The summons being in the name of the firm and I.G. Bhutani and he having come to know of the same cannot take advantage of the typographical error in the subsequent summons to remain away from the court.

In these circumstances, it cannot be said that he was not in knowledge of the case. There was sufficient time to appear in the Court. He was proceeded against ex-parte on 22.05.2007. He moved an application for setting aside the order only in the year 2014, whereas, it is his own case in the grounds of revision before this Court that he came to know about passing of judgment and decree only when he received a letter dated 25.02.2010 from Punjab National Bank, Fountain Chowk, Gurgaon. The revision petition is also filed in the year 2018, after two years of the order dated 15.07.2016.

In view of the same, the present revision petition is dismissed being devoid of any merit.

Pending miscellaneous application(s), if any, stands disposed of accordingly.

(NIRMALJIT KAUR)
JUDGE

20.08.2019
sandeep

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No