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

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Date of Order: 22.01.2019

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F.A.O.No.24/2019

SPORTS STATION (INDIA) PVT LTD Appellant

Through: Mr. Sonal Jain & Mr. Kuldeep Singh,
Advocates.

Versus

SUNIL RAI @ SUNEIL RAIRespondent

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

C.M. No.3061/2019 (for exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

F.A.O. No.24/2019 & C.M. No.3060/2019 (for stay)

1. The impugned order dated 01.10.2018 passed by the court of learned Additional District Judge-01, South District, Saket, New Delhi, on an application under Order IX Rule 13 of Code of Civil Procedure, 1908 ('CPC') bearing M No.27/2015 by which the *ex-parte* judgment and decree dated 11.09.2013 in Civil Suit No.169/2013 was set aside, is the subject-matter of challenge in the present appeal.

2. Learned counsel for the appellant/plaintiff/decreed-holder has fairly admitted that the proper service of summons upon the

respondent was not effected as the report of refusal of summons by the mother of the respondent is not witnessed as required under Order V Rule 17 CPC. However, he contends that the summons of the suit were sent to the respondent by registered AD post on which the postman reported '*bar bar jane par bhi prapt karta nahi milta*'.

3. Learned counsel for the appellant submits that this report indicates that the respondent has refused to accept the service of the summons by registered AD post. In support of his contention, learned counsel for the appellant has relied upon the judgment(s) of the Hon'ble Supreme Court in ***Gujarat Electricity Board & Another vs. Atmaram Sungomal Poshani; (1989) 2 SCC 602*** and ***N. Parameswaran Unni vs. G. Kannan & Another; (2017) 5 SCC 737***.

4. To rebut the presumption of service by registered AD post, the respondent has examined himself as DW-2 where he testified that '*no service in any manner has been effected in the suit decided against me or any of my family members. The report of process server is wrong and nobody neither from postal department nor from the court has come to my address to serve the summons in the suit of recovery.*' The line of cross-examination by the appellant/plaintiff indicates that the deposition of the respondent to the effect that nobody from the postal department has come to his address to serve the summons in the suit property went un rebutted and unchallenged. It is a well-settled proposition of law that if a party does not cross-examine the witness on the point stated by him in his examination-in-chief, he is deemed to have admitted whatever is stated by him in his examination-in-chief.

Therefore, it is not proved on record that the respondent was served with the summons by registered AD post.

5. In the circumstances, I do not find any illegality or impropriety or infirmity in the impugned order dated 01.10.2018. As such, the appeal along with pending application, being C.M. No.3060/2019, is dismissed with no order as to cost.

(VINOD GOEL)
JUDGE

JANUARY 22, 2019
‘AA’