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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th March, 2020
+ **CM(M) 1559/2019 & CM APPL. 47134/2019**
RAJEEV KUMAR SHRIVASTAVA Petitioner
Through: Ms. Divya Kesar with Mr.
Mannmohit K. Puri, Advocates (M-
9818187777)

versus

PUBLICITY HUB & ANR Respondents
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH
Prathiba M. Singh, J. (Oral)

1. A suit under Order XXXVII CPC has been filed by the Petitioner herein/Plaintiff (*hereinafter 'Plaintiff'*) against Respondents herein/Defendants, namely, Publicity Hub which is a sole proprietary concern of Smt. Abhilash Sarkar @ Smt. Tumpa Sarkar (*hereinafter 'Defendants'*). The suit seeks recovery of a sum of Rs.4,98,000/- along with interest. The Trial Court issued summons in the suit in the prescribed format on 4th April, 2019 and the service of summons on the Defendants was effected on 2nd April, 2019. The Defendants filed their memo of appearance and in the said memo of appearance, the Defendants furnished the following addresses for service of summons for judgment:

"1. That the defendant has received the copy of the notice in the above noted case on 02.04.019 issued by this Hon'ble Court.

2. That the defendant is being filing his appearance in

the present case.

3. That the defendant furnishing his address for the service of summon for judgments and the same is following as under :-

- ***Publicity Hub, Sole Proprietor Concern, E-473, Durga gali, East Babarpur, Shahdara, Delhi-110032 also At D-336, Ground Floor, Sector-10, Noida-201301***
- ***Smt. Tumpa Sarkar W/o Sh. Ashok Sarkar R/o E-473, Durga gali, East Babarpur, Shahdara, Delhi-110032 Also At D-336, Ground Floor, Sector-10 Noida-201301”***

The said memo of appearance was filed by Sh. Vijay Kr. Singh, Advocate on behalf of the Defendants.

2. The Defendant No. 2 – Smt. Tumpa Sarkar also filed an affidavit in support of the memo of appearance under Order XXXVII Rule 3(1) CPC stating that she confirms the addresses given in the memo of appearance.

3. Thereafter, the Plaintiff filed summons for judgment. The said summons were sent to the Defendants both at the Delhi address and at the Noida address. The Plaintiff relies upon the certificates issued by the Department of Posts, Noida certifying that the summons for judgments were served on the Noida address. The tracking report of the Department of Posts showing the delivery to the Noida address is also placed on record. On 14th May, 2019, when summons for judgment were issued by the Trial Court, the Id. Counsel for the Defendants was also represented before the Court.

4. Despite the said service being affected and the Id. counsel for the Defendants being conscious of the fact that the summons for judgment has been issued, none appeared on 21st August, 2019. The Trial Court instead of proceeding to pass a decree, directed fresh service. The Plaintiff is aggrieved

by the said order.

5. The submission of the ld. counsel for the Plaintiff is that the approach of the Trial Court is erroneous inasmuch as once service was effected by the Plaintiff, repeated service cannot be directed in terms of the judgment of this Court in ***Parminder Singh & Anr. v. Virender Pal Singh Jolly, 2004 IV AD (Delhi) 545*** and ***M/s. Emmsons Internation Ltd. v. M/s Harshvardhan Chemicals & Minerals Ltd, 116 (2005) DLT 156***. He submits that the counsel for the Defendants was present on the day when summons for judgment were issued. The ld. counsel was well aware that the same have been issued. Thereafter, the Defendants have also been served with the summons for judgment at the Noida address. The same were even despatched to the Delhi address by speed post. The clear conclusion is that the Defendants were served and that they are evading service. Hence, the direction to effect fresh service is completely erroneous and not sustainable.

6. The second issue raised was that the summons for judgment ought to have been directed to be served upon the ld. counsel for the Defendants and not upon the parties inasmuch as once the counsel has entered appearance, the purpose of issuing summons for judgment to the Defendants is served by serving the counsel for the parties itself. In support of this plea, ***M/s Emmsons Internation Ltd. (supra)*** is again relied upon by the ld. counsel. He also further relies upon Chapter 21 of the Delhi High Court Rules to submit that once an advocate has entered appearance, notice could be served on the party either in person or on the advocate.

7. This Court had issued notice in this petition on 30th October, 2019. On the next date i.e. on 20th December, 2019, the Defendants appeared before the Court through counsel and the sole proprietress i.e. Smt. Tumpa Sarkar

was also present in person. On the said date, the Court had directed that if the Defendant No.2 is willing to deposit a sum of Rs.2 lakhs, the Court would pass appropriate orders after hearing the Defendants. The said order reads as under:

“Ld. counsel for the Respondents, appearing before the Trial Court, has entered appearance. He, however, submits that he does not have any instructions in the matter. Respondent No.2, who is the sole proprietress of the Respondent No.1 firm, is present in person and submits that if she is given one month’s time, she is willing to deposit a sum of Rs.2 Lakhs in this Court. Subject to the Respondents depositing a sum of Rs.2 Lakhs with the Registrar General of this Court, on or before 20th January, 2020, the adjournment is being granted, in order to enable the Respondents to argue the matter on the next date. If the deposit is not made, considering that the present suit is under Order XXXVII CPC and no leave to defend has been filed, despite service, this Court would pass appropriate orders on the next date, in accordance with law. List on 28th February, 2020.”

8. It is noticed today that the Defendants have not made any deposit whatsoever and the last order has also not been complied with. It is clear that the Defendants are evading appearance before this Court as they are obviously aware of the natural consequence of non-appearance.

9. The Court has perused the record placed in respect of the service of the Defendants. The Plaintiff has not just placed the copy of the speed post receipts but also the tracking report of the Department of Posts. Even a certificate has been filed from the Department of Posts, Noida to show that the summons for judgment were delivered to the Defendants. Under these

circumstances, there was no reason for the Trial Court to direct service once again.

10. In any event, when the Defendants appeared before this Court, they were obviously aware of the pendency of this petition as also the fact that the summons for judgment have now been issued to them. The leave to defend application ought to have been filed.

11. The entire purpose of a suit under Order XXXVII CPC would be defeated if Defendants are allowed to evade service in this manner. Summary procedures have been prescribed in the CPC to ensure that recovery suits wherein recovery of sums are involved, are decided expeditiously. Courts have to therefore, follow the strict procedure mentioned in Order XXXVII CPC.

12. Once the memo of appearance was filed through counsel, the Trial Court firstly, ought to have permitted the service of summons for judgment on the counsel itself. The entire purpose of counsels entering appearance for parties and filing memo of appearance, would be defeated, if repeatedly, especially in Order XXXVII CPC suits, summons for judgment or other services have to be effected upon the parties directly. That is not the intention of either the provisions of the CPC or the practice and procedure which is prescribed for the Trial Courts or the High Court. Once counsels enter appearance, service to the parties is permitted through counsel and is normally to be effected through counsel only. This is also clear from a reading of the observations of this Court in *M/s Emmsons Internation Ltd. (supra)* where the Id. Single Judge of this Court has observed as under:

“6. The whole purpose of expeditious and indeed

summary disposal of an Order XXXVII suit which avowedly prescribes summary procedure is totally defeated if the defendant who under Order XXXVII Rule 3(1) has already been served with the statutory summons is given further opportunity to file the application for condonation of delay in filing the memo of appearance as postulated under Order XXXVII CPC. A defendant who has already been served with the statutory summons and is obviously not interested in any expeditious disposal, can easily delay proceedings by making himself scarce. This will defeat the whole purpose of expeditious and indeed summary disposal of an Order XXXVII suit. Once the defendant has been served and is represented through counsel after notice under sub section (1) of Order XXXVII Rule (3), then the summons for judgment under sub-section (4) is only required to be served on such counsel, who files the memo of appearance on behalf of the defendant within the stipulated time of 10 days of the receipt of summons for appearance. All such hearings could have been averted and valuable judicial time and effort saved in case the defendant counsel had taken care in filing the memo of appearance on behalf of the defendant within the stipulated time of 10 days of the receipt of summons for appearance even after availing so many opportunities so as to enable the Court to proceed to decree the suit in case leave to defend was not filed within the period stipulated under Order XXXVII Rule (5). Order XXXVII Rule 3 CPC provides a procedure for the appearance of the defendant and the defendant is required to enter appearance within 10 days of service which is dated 17th February, 2004. Since the defendant has not entered appearance in the stipulated period under Order XXXVII Rule 3 CPC, the consequences indicated under Order XXXVII of Rule 2, CPC follow and the plaintiff is entitled to succeed in the suit.”

13. A similar view was taken previously by this Court in *Parminder Singh & Anr. (supra)*. The relevant portion of the judgment reads as under:

“2. ...

Once a party is served it may be unnecessary to serve him once again since he is obliged to appear at every hearing either personally or through his Advocate and/or representative. Since our judicial system considers it an adhorrence to decide a case in the absence of a party, it often times punctiliously conforms to procedure, even where it is obvious that the delinquent party is abusing this judicial concern. The Plaintiff in the present case has been allowed permission to sue as an indigent person which leads to the assumption that he did not possess the wherewithal to counter dishonest tactics of a Defendant who will obviously be benefited from any delay in the disposal of the suit.”

14. A perusal of the Delhi High Court Rules in Chapter XXI also shows that whenever notices are to be issued to a party, the service of the same can be effected either on the party or through the counsel. The said Rule reads as under:

“1. Service of notice - (a) Except where otherwise provided by these Rules, or ordered by the Court, all summons, notices other documents required to be given to or served on a party or person, who resides within the jurisdiction of this Court, shall be served on such party or person either personally or on his advocate.

(b) Service of any notice, order or other document upon a person, who resides outside the jurisdiction of this Court, but within the territory of India, may ordinarily be effected by posting a copy of the

document required to be served in a prepaid envelope registered for acknowledgement addressed to the party or his agent empowered to accept service, at the place where the party or his agent resides or carries on business or personally works for gain.

(c) Notwithstanding anything hereinabove contained in rule 1(b) the Registrar may direct in a particular case or class of cases, that the service shall be effected in the manner provided by the Code for service of summons.

(d) Unless the contrary is proved, a document served by post shall be deemed to be served at the time at which it would be delivered in the ordinary course of post.”

15. A conjoint analysis of the above legal position clearly shows that the summons for judgment in this case ought to be deemed to have been served upon the Defendants at the addresses in Delhi and Noida as also through the counsel who appeared on the date when the summons for judgment was issued i.e. on 14th May, 2019. In any event, in this petition, this Court had issued notice on 30th October, 2019. The Defendants had even entered appearance on the next date i.e. 20th December, 2019. The Defendants have showed no seriousness to defend the suit. The summons for judgment having been served upon the Defendants, the leave to defend having not been filed in terms of provisions of Order XXXVII CPC, the suit is liable to be decreed in favour of the Plaintiff.

16. Accordingly, a decree is passed in favour of the Plaintiff against the Defendants No.1 and 2 for a sum of Rs.4,98,000/- along with simple interest @ 8% per annum from the date of filing of the suit till date of payment. The present order be communicated to the Id.ADJ-01, Karkardooma Courts,

Delhi in order for the Trial Court to draw up the decree sheet.

17. The petition is allowed in the above terms and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 04, 2020

Rahul/A.S.

