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

+ RSA 112/2022, CAV 287/2022, CAV 288/2022, CM
APPL.40892/2022, CM APPL.40893/2022, CM
APPL.40894/2022

SH RAVINDER KUMAR Appellant
Through: Ms.Naina Kejriwal and Mr.P.P.
Singh, Advs.

versus

SH MAM RAJ & ANR. Respondents
Through: Mr.G.K. Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)
28.09.2022

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1. CS 109/17, subsequently numbered CS 647/17, was instituted by the Respondent 1 against the appellant seeking recovery of possession of the ground floor of House No. 50A, forming part of Khasra No. 307/202, Harijan Colony, Village Mukundpur, Delhi 110042. Summons were served in the suit. The appellant remained absent. The appellant was, accordingly, proceeded *ex parte* on 21st September 2017.

2. The appellant remained absent throughout the proceedings before the learned SCJ in the suit, resulting in the passing of a judgment and decree against the appellant and in favour of the respondent on 12th December 2017 (i) granting recovery of possession



of the suit property to the Respondent 1 and against the appellant, (ii) granting Respondent 1 arrears of rent @₹ 5,100/ - per month from 1st December 2016 to 31st May 2017 along with interest @ 8% per annum, (iii) granting Respondent 1 damages/*mesne* profits/user charges, from 1st June 2017 @₹ 5,100/ - per month till the date of handing over of the suit property to the appellant, along with additional interest and costs.

3. As the aforesaid judgment and decree had been passed *ex parte*, the appellant moved an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC), in which it was sought to be contended that summons in the suit had not been received by the appellant.

4. The said application was dismissed by the learned SCJ, holding that the appellant had been duly served with summons in the suit on 11th August 2017 through a male member, but chose to remain absent.

5. The said order was challenged, by the appellant, by way of appeal, *vide* RCA 32/19 before the learned ADJ.

6. The order dated 29th March 2022, whereby the learned ADJ has dismissed the said appeal, has been challenged before this Court by way of the present second appeal under Section 100 of the CPC.

7. The learned ADJ has also held that summons in the suit had been served on one Arjun who was present at the residence of the appellant and had signed on the summons as proof of receipt thereof.



Seen in the backdrop of the fact that, despite service, the appellant chose to remain absent, the learned ADJ has held that no case for interference with the decision of the learned SCJ on the application of the appellant under Order IX Rule 13 of the CPC could be said to exist.

8. Learned Counsel for the appellant submits that, in fact, no summons were served on the appellant and that, in this regard, the only finding is that the summons had been served on a “male member” of the appellant’s family. She submits that her client had not authorised any male member to receive summons in the suit.

9. I have considered the submissions of learned Counsel, in the backdrop of the material on record.

10. An appeal under Section 100 of the CPC lies only on substantial questions of law.

11. No substantial question of law can be said to arise either from the order dated 7th February 2019 passed by the learned SCJ on the application of the appellant under Order IX Rule 13 of the CPC, or from the impugned judgment dated 29th March 2022, passed by the learned ADJ in the appeal preferred thereagainst. The findings are pure findings of fact, essentially involving the issue of service of summons. In an appeal under Section 100 of the CPC, this Court cannot revisit the concurrent finding, of the Courts below, that service of summons had indeed been effected on the appellant.



12. This second appeal is accordingly completely bereft of merit and is accordingly dismissed. Caveats stand discharged. Miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J

SEPTEMBER 28, 2022/kr

