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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1230/2022, CM APPL. 49058/2022 & CM APPL. 49059/2022

JK COTTON LTD Petitioner
Through: Mr. Himanshu Satija, Adv.

versus

TUSHAR KHANNA Respondent
Through:

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

JUDGMENT(ORAL)

% **16.11.2022**

1. This petition under Article 227 of the Constitution of India assails the order dated 13th July 2022, passed by the learned Additional District Judge (“the learned ADJ”) in MISC DJ No. 930/19 (*J.K. Cotton Ltd. v. Tushar Khanna*). By the impugned order an application filed by the respondent Tushar Khanna, as the defendant in the suit under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) has been allowed.

2. *Ex parte* judgment was passed in the suit against the respondent-defendant on 5th November 2018. The respondent moved an application under Order IX Rule 13 of the CPC, stating that due service of summons in the suit (CS 2678/2016) was not effected on him. He pointed out, in the application, that the address of the respondent, as provided by the petitioner-plaintiff in the Memo of Parties in the suit is R-731, New Rajender Nagar, New Delhi (“R-731” hereinafter), whereas summons were served on R-613, New

Rajender Nagar ("R-613" hereinafter), New Delhi.

3. The Process Server, who had proceeded to effect summons as issued by the Court, stated, in his report, that he had proceeded, in the first instance, to R-731, but was re-directed, at the instance of a servant, to R-613. According to the Process Server's report, at R-613, the summons were served on the respondent's father.

4. The respondent denied these assertions. In his application, the respondent pointed out that the address provided in the Memo of Parties filed with the suit was R-731, New Rajender Nagar, New Delhi. He denied the fact that the Process Server met any servant at the said address or that he had been re-directed to R-613. He pointed out that the identity of the servant, who allegedly re-directed the Process Server was also not forthcoming in the Process Server's report. He also denied the assertion, in the Process Server's report, that the summons were served on his father. The signature on the summons, purportedly of the father of the respondent, was also denied. The respondent further asserted that, in all probability, the Process Server was in collusion with the petitioner.

5. He pointed out, in this regard, that the statement of the Process Server was never recorded.

6. The learned ADJ, dealing with the aforesaid contentions, has observed, in para 12 of the impugned order, that the respondent had failed to show that he was not residing at R-613, or that his father was not residing with him. As such, the learned ADJ has rejected the respondent's contention that service was effected at a wrong address.

7. The learned ADJ has, nonetheless, proceeded to allow the respondent's application by accepting his contention that there was no proof that summons had been served on the father of the respondent. In so holding, the learned ADJ compared the signature on the summons, which was merely in the form of initials, with the signatures of the respondent's father in a parallel suit (CS 383/14 – ***Subhash Khanna v. Seerna Arvind Bhasin***), to hold that there was no similarity between the two signatures.

8. Following the said observations, the learned ADJ proceeds to allow the application of the respondent in the following terms.

“17. In view of all the above facts, the service has been effected at an address which is not mentioned in the memo of parties. Service has been effected by way of very short initials. No identity card of the said person Sh. Subhash was obtained and Process Server himself was not examined in the court. There is no- eye-witness who would have witnessed the signing of summons by the father of defendant.

18. In these circumstance, I deem it appropriate to allow the present Order 9 Rule 13 CPC application. The present application is allowed and the ex-parte judgment is hereby recalled. Defendant is permitted to contest the suit on merits and is permitted to file written statement on the next date of hearing with advance copy of the same to the opposite party.”

9. I have heard Mr. Himanshu Satija, learned Counsel for the petitioner.

10. Mr. Satija submits that, having rejected the respondent's contention that the service of summons had not been effected at correct address, the learned ADJ materially erred in allowing the respondent's application by comparing the signatures of the respondent's father in another suit with the signature on the summons

and holding, on that basis, that there was no proof that the summons had been effected on the respondent's father. He submits that, at the very least, the learned ADJ ought to have referred the matter to a handwriting expert, before returning any such finding.

11. This Court has been coming across a number of cases in which Article 227 of the Constitution of India is being invoked, despite no such circumstance as would justify such invocation, being forthcoming on the record.

12. There appears to be a prevalent misconception that Article 227 of the Constitution of India confers, on the High Court, wide powers. In fact, the legal position is precisely to be contrary. The Supreme Court has, in a number of decisions, held that the scope of jurisdiction conferred on High Court under Article 227 of the Constitution of India is heavily circumscribed. The High Court is proscribed, while exercising Article 227 jurisdiction, from entering into the correctness of the order under challenge. Article 227 merely confers, on the High Court, supervisory jurisdiction. In exercise of such jurisdiction, the High Court is more concerned with the Court which passes the order under challenge, rather than the order which is passed by the Court. If the manner of exercise of discretion by the court below does not suffer from any such infirmity as would justify supervisory interference, Article 227 would not justify invocation. Insofar as findings by the court below, on merits, are concerned, they could constitute a justification for interference under Article 227 only where the findings are so perverse that no reasonable person would arrive at the said conclusion. In that context, the High Court has to be guided by the

judgment of the Supreme Court in *Kilasho Devi Burman v. CIT*,¹, which holds that a conclusion would be “perverse..... if it is such that no person, duly instructed, could upon the record before him have reasonably come to it”. Where perversity attaches to the manner in which evidence has been appreciated by the Court or authority below – though the present controversy does not involve this issue – the finding of the court below is said to be “perverse”, “if it is not supported by evidence or contains inferences drawn in a stretch and unacceptable manner”, as held in *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*².

13. Para 17 of the impugned order passed by the learned ADJ, in the present case, allows the respondent’s application on the ground that (i) service was not effected at the address mentioned in the Memo of parties, (ii) the signature purportedly of the respondent’s father, on the summons, was in the form of initials which did not correspond with his signature in CS 383/14, (iii) no identity card of the respondent’s father was obtained by the Process Server and (iv) the Process Server himself was not examined in the Court.

14. These are findings which were well within the jurisdiction of the learned ADJ. Insofar as the submission of Mr. Satija that the Court ought to have referred the matter to a handwriting expert, given the facts of the present case, I do not find the submission worthy of acceptance. In *Lalit Popli v. Canara Bank*³, the Supreme Court endorsed the authority of the Court to compare signatures in order to satisfy itself, where there is a dispute in that regard. As such, if the

¹ (1996) 7 SCC 613

² (2012) 7 SCC 288

³ (2003) 3 SCC 583

learned ADJ has, by comparing the signatures of Mr. Subhash in CS 383/14 with the initials contained on the summons as served on him, arrived at a conclusion that there was no positive material to indicate that the person who accepted the summons was, in fact, the respondent's father, the finding, being purely one of fact, does not, in my view, call for interference under Article 227 of the Constitution of India, especially as the Process Server himself was never examined in the matter.

15. In fact, in the opinion of this Court, the application of the respondent was liable to be allowed even on the ground that the summons had been served at an address other than that reflected in the Memo of Parties. Where the plaintiff, in the Memo of Parties, provides the address for service on the defendant, service has to be effected only at that address and not at any other address. The Process Server stated, in his report, that he had proceeded to R-613, being the address reflected in the Memo of Parties in the plaint, but was re-directed to R-731, New Rajender Nagar, New Delhi by a servant. The identity of the servant remained unknown. There was no evidence to indicate that any such re-direction of the Process Server had taken place. The Process Server himself was never questioned or examined in that regard.

16. In these circumstances, in my opinion, apart from the reasons adduced by the learned ADJ, the application of the respondent was also entitled to be allowed, as summons had not been effected at the address contained in the Memo of Parties, and the Memo of Parties, in the plaint, was never amended to reflect R-613 as the address of the respondent.

17. No case, therefore, arises for interference under Article 227 of the Constitution of India. The petition is accordingly dismissed *in limine*. Miscellaneous applications are also disposed of.

18. The learned ADJ is requested to proceed with the suit as expeditiously as possible without granting unnecessary adjournments to either side.

C.HARI SHANKAR, J

NOVEMBER 16, 2022

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