

S/L 24
22.03.2023
Court. No. 12
Sourav

**CO 2977 of 2019
With
CAN 2 of 2023**

**Link Polymer & Chemtech (P) Ltd.
Vs.
Kirti Chemicals & Anr.**

*Mr. Mahendra Prasad Gupta
Mr. Shyamal Mondal
Ms. Antara Panja
Mr. Dilip Kumar Saila
Mr. Supriya Mahajan*

...for the Petitioner.

*Mr. Shyamal Chakraborty
Mr. Rajkumar Lahoti
Ms. Manju Jaiswal
Mr. Debajyot Mondal*

...for the opposite parties.

Both the parties are represented by their respective learned advocates.

The present revisional application is now taken up for hearing.

Heard learned advocates for the contending parties for and against the instant revisional application.

The present revisional application is now taken up for passing appropriate order.

In this revisional application as filed under Article 227 of the constitution of India, the Order No. 8 dated 18.07.2019 as passed by learned 7th Bench, City Civil Court, Calcutta in Commercial Suit No. 09 of 2018 has been assailed.

By the impugned order, learned trial court in a proceeding under Order 37 of the Code of Civil Procedure, has been pleased to reject the defendant's application for vacating the said suit from *ex parte* Board. The defendant of

the said commercial suit felt aggrieved and thus preferred the instant revisional application.

In support of the instant revisional application, learned advocate for the defendant/revisionist at the very outset draws attention of this Court to the impugned order. Attention of this Court is also drawn to the copy of the petition being Annexure “D” at Page No. 46 of the instant revisional application which has been rejected by the learned trial court. It is argued that before the learned trial court a specific plea was taken by the defendant that though the defendant has received the summons of the said summary suit along with a copy of the plaint but annexures to the said plaint were not served upon the said defendant for which the defendants have failed to understand the basis of the claim of the plaintiffs. It is further argued by the learned advocate for the revisionist/defendant that non-supply of annexures to the plaint cannot be considered as a good service within the meaning of Order 5 of the Code of Civil Procedure.

It is contended further that the learned trial court while passing the impugned order did not at all deal with the said contention as raised by the defendant and wrongly misdirected himself in holding that since after the receipt of the summons the defendant has failed to appear and has also failed to file in Court his address for service of notice on him, the petition filed by the defendant is liable to be rejected. Placing reliance to a reported decision in ***Nahar Enterprises Vs. Hyderabad Allwyn Ltd. and Another*** reported in **(2007) 9 SCC 466**, it is contended on behalf of the defendant/revisionist that it is now a settled

position of law that service of summons along with a copy of the plaint without its annexures cannot be considered to be a good service within the meaning of Order 5 of the Code of Civil Procedure and thus, the learned trial court ought to have allowed the petition as filed by the defendant before the learned trial court.

Per contra, Mr. Chakraborty, learned advocate for the plaintiff/opposite party at the very outset draws attention of this Court to the written objection as filed by the plaintiff/opposite party herein before the learned trial court as against the petition as filed by the defendant before the learned trial court. It is contended that from Annexure “H” at page No. 75 of the instant revisional application, it would reveal that in paragraph no. 5 of the said written objection, the plaintiff has categorically denied the contention of the defendant and it has been stated specifically that the plaintiff has sent the summons together with the copy of the plaint and its annexures as issued by the learned trial court in both ways that is; through Court or under registered post with A/D.

It is further argued by Mr. Chakraborty, learned advocate that while disposing of the said application also considered another facets of the petition as filed before the learned trial court and thus rightly came to a conclusion that the plea of ill-health of the uncle of the director of the defendant company is a myth and, therefore, the learned trial court is very much justified in passing the impugned order. Mr. Chakraborty, in course of his argument, places his reliance upon a reported decision in ***Bhola Nath Das Vs.***

Basanti Rani Neogi & Ors. reported in **2001(2) CHN490.**

This Court has meticulously perused the entire materials as placed before this Court including the impugned order. This Court has given its due consideration over the submissions of the learned advocates for both sides. This Court has also perused the reported decisions as cited from the Bar.

On perusal of the copy of the application as available at Page No. 46 being annexure “D” of the instant revisional application, it reveals that before the learned trial court the defendant has prayed for vacating the matter from the *ex parte* Board on two fold grounds, viz., (i) annexures to the plaint were not served upon him and (ii) at that material time i.e., at the time of receipt of summons by him, he was highly engaged in taking care of his uncle Sri Asim Kumar Chandra at Nasik.

On perusal of the certified copy of the impugned order, it appears to this Court that while passing the impugned order, learned trial court has correctly interpreted the various provisions of the Order 37 of the Code of Civil Procedure but has omitted to make a finding with regard to the contention no. (i) as mentioned above especially when such specific plea was taken by the defendant in his application in Paragraph No. 5.

On perusal of the provisions of the Order 5 of the Code of Civil Procedure and the reported decision of ***Nahar Enterprises (Supra)*** this Court has got no hesitation to hold that unless the plaint along with its annexures in totality

have been served upon the defendant, it cannot be said to be a good service of summons since annexures to the plaint becomes integral part of the pleading without which it becomes impossible for the defendant to prepare his defence.

Since while passing the impugned order, learned trial court has miserably failed to deal with the plea as raised by the present defendant/revisionist in Paragraph Nos. 5 and 6 of the petition for vacating from the *ex parte* Board petition, this Court considers that under no stretch of imagination, it can be said that the impugned order as passed by the learned trial court is a good order in the eye of law.

In view of such, this Court finds sufficient merit in the instant revisional application and accordingly, the instant revisional application being **CO 2977 of 2019** is hereby allowed.

Consequently, the impugned order dated 18.07.2019 as passed by the learned 7th Bench, City Civil Court, Calcutta is hereby set aside.

Learned trial court is once again directed to re-hear the petition as filed by the defendant for vacating the said suit from the *ex parte* Board afresh on the basis of the contents of the said application and the written objection as already filed their against and to pass a reasoned order without being influenced that any of the observations made hereinabove since the observations as made hereinabove is purely limited for the disposal of the instant revisional application.

It is, however, made clear that since the Commercial Suit No. 09 of 2018 is sufficiently old one, learned trial court

is hereby directed to dispose of the said application for vacating the matter from *ex parte* Board as filed by the defendant within a fortnight from the date of communication of this order without granting any adjournment to either sides on whatsoever ground.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)