

\$~61

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

% Judgment delivered on: 21.04.2023

+ CM(M) 644/2023

UNION BANK OF INDIA

..... Petitioner

versus

VIJAY PAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Vipin Singh, Advocate

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 19856/2023

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 644/2023

3. The present petition challenges the order dated 17.12.2022 passed in M. No. 120/2022 (in Suit No. 391/2019) titled *Union Bank of India vs. Vijay Pal*, whereby an application under Order IX Rule 4 read with Section 151 of CPC, 1908 filed on behalf of the petitioner was dismissed.

4. Learned counsel appearing for the petitioner submits that the counsel who was originally handling the suit before the learned Trial Court was in an advanced age and was therefore, unable to take appropriate steps in time to file the fresh address of the respondent/defendant for the purposes of filing an application under Order V Rule 20 of CPC.

5. Learned counsel submits that the bank had, in fact, sought effecting service upon the respondent/defendant by ordinary process, however, the same entailed in a failure for the reason that the respondent/defendant had left the address. Learned counsel submits that it was not easy for the previous counsel, having regard to his age, to have found out the address of the respondent/defendant and the said search entailed some delay.

6. Learned counsel submits that given one chance the petitioner would take all steps earnestly to ascertain the correct and fresh address of the respondent/defendant so as to enable the petitioner to file the application under Order V Rule 20 of CPC.

7. Learned counsel submits that the advance notice of the present petition in accordance with the notification of this Court was sought to be effected by way of sending the present petition by speed post, the proof whereof has been annexed at page 47 to the present petition.

8. On a query, learned counsel submits that the envelope has been returned back with the endorsement that the addressee has left and learned counsel submits that the tracking report also confirms the same.

9. Learned counsel has produced, post lunch session, the original envelope as well as the tracking report generated from the speed post

official website showing that the envelope was sent at the correct address and was returned with the endorsement “left”.

10. In that view of the matter, learned counsel submits that the petitioner may be granted one opportunity to furnish fresh address of the respondent/defendant so as to enable the petitioner/plaintiff either to effect service in the ordinary mode or in the alternative to file an application under Order V Rule 20 of CPC seeking substituted mode of service.

11. This Court has considered the arguments as also perused the impugned order passed by the learned Trial Court.

12. It appears from the perusal of the said impugned order as also from the record that there has been some delay which had occasioned on the part of the petitioner/plaintiff. However, keeping in view the fact that the respondent/defendant was not served, despite having implemented the ordinary procedure under Order V of CPC, the petitioner/plaintiff could possibly only seek to effect service by way of substituted mode as stipulated under Order V Rule 20 of CPC.

13. Keeping in view the fact that the respondent/defendant is yet to be served as also the fact that the copy of the present petition also was returned with the endorsement “left”, this Court is of the considered opinion that in the interests of justice, one more opportunity can be granted to the petitioner/plaintiff to effect service upon the respondent/defendant either by way of ordinary mode, if fresh address is ascertainable, failing which the petitioner/plaintiff may also be permitted to effect service by way of substituted mode under provisions of Order V Rule 20 of CPC.

14. In view of the above, the impugned order rejecting the application under Order IX Rule 4 of CPC is set aside. The suit before the learned Trial Court is restored to its original number.

15. Learned Trial Court is directed to proceed in accordance with law at the stage when it was dismissed.

16. In view of the above, the petition is allowed with no order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 21, 2023

ॐ

