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

Date of decision: 08.11.2023

+ CM(M) 496/2016

RAJEEV GUPTA

..... Petitioner

Through: None

Versus

HAZARILAL GUPTA

..... Respondent

Through: Mr. Prem Chand, Advocate along
with Respondent in person

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. None appears on behalf of the Petitioner. In fact, there has been no appearance on behalf of the Petitioner on 10.04.2023, 17.04.2023 and 22.05.2023. It is therefore apparent that the Petitioner is not diligent in prosecuting the present petition.

2. Even otherwise, this Court has perused the impugned order dated 09.02.2016 passed by District & Sessions Judge (East), Delhi in MCA No. 23/2016, titled as *Rajeev Gupta v. Hazarilal Gupta* ('Appellate Court'). The operative portion of the judgment read as under:

“5 Thrust of the argument of appellants is that affixation could



not have been done on the first date and it was in violation of Delhi High Court's Rules. For the sake of argument, if this ground is to be taken as valid and affixation part is not considered, even then there was deliberate and intentional refusal to receive summons by defendant No.2. She had first talked to her husband i.e. defendant No.1 and only then she refused to receive the summons. It is apparent from the report of Process Server dated 20.08.09. When defendant No.2 had intentionally refused to receive the summons on her behalf and on behalf of defendant, it was a proper service o the defendants.

6 Relevant portion of Order. V Rule 17 of the CPC is reproduced hereinunder:

*"Where the defendant or his agent or such other persons as aforesaid refused to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, can. not find the defendant*****, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business."*

7 In the facts and circumstances of the case, I am of the view that there was proper service of summons on the defendants/appellants and impugned order was rightly passed. Impugned order is a reasonable and legal order and does not call for any interference. Appeal has no merits. Same is accordingly dismissed. TCR be sent back along with copy of the order."

3. The present petition filed impugns the said order of the Appellate Court dismissing the appeal filed by the Petitioner against dismissal of the application under Order IX Rule 13 of CPC for setting aside the ex-parte decree dated 29.05.2010 passed by the Trial Court against the Petitioner herein.

4. The Petitioner herein is the original defendant and Respondent No.1 is the original plaintiff before the Trial Court.

4.1. The civil suit before the Trial Court was filed by Respondent No.1 seeking a suit for possession and prohibitory injunction against the Petitioner and his wife, Respondent No.2 herein to vacate and handover the possession of the property no. 2608, Gali No. 16. Kailash Nagar, Delhi-110031 ('subject property')



5. Vide judgment dated 29.05.2010 an ex-parte decree for possession was passed against the Petitioner herein by the Trial Court in suit bearing no. 122/09.

This Court has been informed that the possession of the subject property has been recovered by the Respondent No. 1 in execution of the said decree for possession in the year 2011.

6. Thereafter in the said suit an application bearing Misc. No. 02/2012 was filed by the Petitioner under Order IX Rule 13 read with section 151 CPC for setting aside the exparte decree dated 29.05.2010 on the ground that the Petitioner were never served in the aforementioned civil suit filed by the Respondent No. 1 as the Petitioner was out of Delhi and therefore, were not available in the subject property. The said application was dismissed by the Trial Court vide order dated 04.12.2014 on the ground that the wife of Petitioner i.e., Respondent no. 2 herein refused to accept the summons sent from the Court despite the fact that she had also spoken with the Petitioner on telephone and moreover no document as well was also filed on behalf of the Petitioner for substantiating his claim.

7. Aggrieved by the same, Petitioner filed an appeal against the order dated 04.12.2014 before the Appellate Court, which was also dismissed vide aforementioned impugned order dated 09.02.2016 extracted above.

8. In the facts of the present case, the Petitioner and Respondent No. 2 have no doubt refused to receive the summons regarding the suit proceedings instituted against them.

9. As is evident from the mandate of Order IX Rule 13 of CPC the burden of proving that the summons of the suit was not duly served is clearly upon the defendant(s). The said provision further stipulates that only



on the subjective satisfaction thereof the concerned Court would set aside the ex-parte decree.

10. As per the facts of this case and on a close reading of the impugned order and the orders passed by the Courts below, this Court is of the view that after perusing the process server's report the Courts below rightly arrived at the conclusion that the defendants therein did not discharge the burden of proof as mandatorily required under Order IX Rule 13 of CPC. Moreover, the Respondent is in possession since year 2011 and the ex-parte decree 29.05.2010 itself has attained finality.

11. This Court is, therefore, of the view that there is no infirmity in the order passed by the Appellate Court and even otherwise this petition is bereft of any merit which would warrant any supervisory correction, in exercise of Article 227 jurisdiction of this Court.

12. In this regard, it would be appropriate to refer to the observations of the Supreme Court in in ***Garment Craft vs. Prakash Chand Goel 2022 SCC OnLine SC 29*** wherein the Supreme Court highlighting the peripheries of the jurisdiction vested under Article 227 of the Constitution held as under:

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the



finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

(Emphasis supplied)

13. Accordingly, the petition is dismissed on merits along with pending applications.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 8, 2023/hp/ms [Click here to check corrigendum, if any](#)

Signature Not Verified

Digitally Signed
By: RASHMI DABAS
Signing Date: 15.11.2023
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