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Application No. 4309 of 2024 and
C.S. (Comm.Div.) No. 279 of 2023

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K.KUMARESH BABU,J.

This application has been filed to set exparte decree passed against the applicant /defendant in the above suit dated 18.04.2024.

2. Heard Mr.B.Balachandar, learned counsel for the applicant and Mr.K.Jagannathan, learned counsel for the respondent and perused the materials placed on record, apart from the pleadings of the parties.

3. The learned counsel appearing for the applicant would submit that he had taken out an necessary application for leave to defend and he e-filed the same on 12.02.2024 in ATN20230001688D202400039 and to substantiate the same, he has produced the screenshot of the High Court's website. He would submit that he was not able to number the said application. This Court by order dated 04.04.2024 holding that the applicant had forfeited her right to defend as she had not filed his written-statement within the prescribed time had set her exparte and proceeded to pass an exparte judgment and decree on 18.04.2024. Therefore, he had filed the present application to set aside the exparte decree.



4. He had also relied upon the judgments of the Hon'ble Apex Court in ***Rajni Kumar -vs- Suresh Kumar Malhotra*** reported in (2003) 5 SCC 315, in ***V.K.Industries -vs- M.P.Electricity Board*** reported in (2002) 3 SCC 159 and in ***Kaushalya Devi -vs- Prem Chand*** reported in (2005) 10 SCC 127 to drive home his contention.

5. Countering his argument, the learned counsel appearing for the respondent /plaintiff would contend that the suit had been filed under Order XXXVII Rule 1 of Code of Civil Procedure, 1908 and the summon was served upon the petitioner on 29.01.2024 and he alleges to have filed an application on 12.02.2024 for leave to defend the suit. He would submit that no such application was listed before this Court and this Court in its order dated 14.03.2024 had recorded that the Registry had submitted a report indicating that no such application had been filed. He would further contend that the said suit had been filed based upon the admission made by the applicant /defendant in his reply to the notice, where he admitted the liability as claimed by the respondent /plaintiff in the suit. He would further submit that the applicant/ defendant had failed to appear before this Court on 04.04.2024 when he was set exparte. He would also contend that by order dated 21.11.2023 in Application No. 6099 of



2023 in the instant suit, the applicant was directed to furnish a security to the extent of the claim amount of Rs.1,27,50,000/-. Even though nearly 11 months had passed, the applicant had not till date provided any security to comply with the said order. Hence, he seeks indulgence from this Court to dismiss the above application.

6. I have considered the rival submissions made on either side.

7. The learned counsel appearing for the applicant had produced the screenshot of this Court's website to substantiate that he had filed an application for leave to defend by e-filing. This has not been taken on record by the Registry. Therefore, a report had been filed that such application has not been filed.

8. It is to be noted that a suit had been filed invoking the powers of the Court under Order XXXVII Rule 1 of Code of Civil Procedure. Reliance had been placed by the learned counsel for the respondent /plaintiff on the reply notice sent by the applicant /defendant to claim that the defendant had admitted the liability. I had also perused the said reply statement dated 10.03.2023, which is document No.11 annexed to the plaint.



9. A reading of the said plaint document would show that the applicant/defendant had admitted borrowal of the money from the respondent /plaintiff and also evinced her intention to repay the money so borrowed. The said notice clearly acknowledges the liability of the applicant/ defendant.

10. In the judgment of the Hon'ble Apex Court in ***Rajni Kumar -vs- Suresh Kumar Malhotra*** reported in (2003) 5 SCC 315, which has also been relied upon by the applicant /defendant to substantiate her claim, the Hon'ble Apex Court had analysed the manner in which an application to set aside the exparte decree passed in a suit filed under Order XXXVII of Code of Civil Procedure had been elucidated. The Hon'ble Apex Court had held that when part of the amount claimed by the plaintiff is admitted by the defendant to be due from him then no leave to defend the suit can be granted unless the admitted amount is deposited by him in the Court. The relevant paragraph is extracted hereunder :-

“10. In considering an application to set aside ex parte decree, it is necessary to bear in mind the distinction between suits instituted in the ordinary manner and suits filed under Order 37 CPC. Rule 7 of Order 37 says that except as provided thereunder the procedure in suits under Order 37 shall be the same as the



procedure in suits instituted in the ordinary manner. Rule 4 of Order 37 specifically provides for setting aside decree, therefore, provisions of Rule 13 of Order 9 will not apply to a suit filed under Order 37. In a suit filed in the ordinary manner a defendant has the right to contest the suit as a matter of course. Nonetheless, he may be declared ex parte if he does not appear in response to summons, or after entering appearance before framing issues; or during or after trial. Though addressing arguments is part of trial, one can loosely say that a defendant who remains absent at the stage of argument, is declared ex parte after the trial. In an application under Order 9 Rule 11, if a defendant is set ex parte and that order is set aside, he would be entitled to participate in the proceedings from the stage he was set ex parte. But an application under Order 9 Rule 13 could be filed on any of the grounds mentioned thereunder only after a decree is passed ex parte against the defendant. If the court is satisfied that (1) summons was not duly served, or (2) he was prevented by sufficient cause from appearing when the suit was called for hearing, it has to make an order setting aside the decree against him on such terms as to cost or payment



into court or otherwise as it thinks fit and thereafter on the day fixed for hearing by court, the suit would proceed as if no ex parte decree had been passed. But in a suit under Order 37, the procedure for appearance of the defendant is governed by provisions of Rule 3 thereof. A defendant is not entitled to defend the suit unless he enters appearance within ten days of service of summons either in person or by a pleader and files in court an address for service of notices on him. In default of his entering an appearance, the plaintiff becomes entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate specified, if any, up to the date of the decree together with costs. The plaintiff will also be entitled to judgment in terms of sub-rule (6) of Rule 3. If the defendant enters an appearance, the plaintiff is required to serve on the defendant a summons for judgment in the prescribed form. Within ten days from the service of such summons for judgment, the defendant may seek leave of the court to defend the suit, which will be granted on disclosing such facts as may be deemed sufficient to entitle him to defend and such leave may be granted to him either unconditionally or on such terms as the court may



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deem fit. Normally the court will not refuse leave unless the court is satisfied that facts disclosed by the defendant do not indicate substantial defence or that defence intended to be put up is frivolous or vexatious. Where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, no leave to defend the suit can be granted unless the admitted amount is deposited by him in court. Inasmuch as Order 37 does not speak of the procedure when leave to defend the suit is granted, the procedure applicable to suits instituted in the ordinary manner, will apply.

(emphasis supplied)”

In the present case, I have already indicated that the applicant in her legal notice has admitted her liability to the suit claim.

11. There has been a mistake on the part of the Registry in filing the report that no such application had been filed. Even though the applicant had not taken any steps to bring the said application for hearing, the applicant would not have been set exparte without such application being listed before this Court. Hence, I am inclined to allow this application as prayed for.



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12. Since the applicant had already admitted her claim even to take up the application for leave to defend as held by the Hon'ble Apex Court as stated supra, the applicant have to deposit such admitted amount.

13. In view of that the present application had been filed for seeking to set aside the exparte order, I am inclined to allow the same only on the condition that the applicant deposits the amount that has been decreed by this Court in its judgment and decree dated 18.04.2024.

14. In fine, the application is allowed on condition that the applicant deposits a sum of Rs.1,27,50,000/- within a period of eight(8) weeks from today. No order as to costs.

23.10.2024

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Issue order copy on 24.10.2024.



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Dated : 23.10.2024