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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of decision: 04.04.2024

M/s Bio-Age Equipment & Services and another ...Petitioners.

Versus

M/s A2Z Infrastructure Ltd. and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. K.S. Rana, Advocate for the petitioners.

Mr. Kunal Dawar, Advocate and
Mr. Vipul Sharma, Advocate for the respondents.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners have challenged order dated 14.05.2018 (Annexure P-8), passed by the trial Court, vide which application under Order IX Rule 13 CPC for setting aside judgment and decree dated 30.01.2016, was allowed and exparte judgment and decree dated 30.01.2016 (Annexure P-3) was set aside.

2. The brief facts for adjudication of the present revision petition are that petitioners/plaintiffs filed civil suit No.166 of 16.10.2015 titled as 'Bio-Age Equipment and another vs. A2Z Infrastructure Ltd. and another' under Order VII Rules 1 and 2 CPC for recovery of Rs.12,21,840/- (principle amount of Rs.9,00,000/- alongwith interest at the rate of 12% per annum i.e. Rs.3,21,840/- for the period from 16.10.2012 to 10.10.2015) on the basis of invoice No.46 dated 16.10.2012 alongwith future interest at the

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rate of 12% per annum from the date of suit till its realization, averring therein that the plaintiff is engaged in the business of manufacturing and selling of electronic goods for industrial use. The defendants purchased electronic products manufactured by the plaintiff from time to time. Vide purchase order dated 07.09.2012, the defendants ordered it amounting to Rs.45,90,000/-, out of which Rs.9,00,000/- are still outstanding against the defendants as per the statement of account. Notice of the suit was given to the defendants for 07.12.2015 on filing of RC and ordinary summons were also ordered to be issued. On 07.12.2015, the summons sent through RC to defendants No.1 and 2 were received back with the report of 'refusal' and none appeared on their behalf, so they were proceeded against exparte and case was fixed for exparte evidence of the plaintiffs. Thereafter, suit of the plaintiffs was exparte decreed on 30.01.2016.

3. The petitioners filed Execution Application No.123 of 2016 on 26.07.2016, in which notice was issued to the respondents on the same addresses and they appeared on 07.03.2017. The respondents filed an application under Order IX Rule 13 CPC for setting aside the exparte judgment and decree dated 30.01.2016 alongwith an application for condonation of delay on 05.04.2017. The trial Court vide impugned order dated 14.05.2018 allowed both the above said applications and the Execution Application filed by the petitioners was held to be infructuous. So the petitioners have knocked the doors of this Court by way of filing the present revision petition.

4. Learned counsel for the revision petitioner has contended that

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the respondents were served through registered post and total six summons were received back by the trial Court, with the endorsement from the postal department that 'respondents had refused to take the summons'. While relying upon Order V Rule 9(5) CPC, he has contended that as it was a proper service the trial Court has erred in concluding that the service was not duly effected upon the respondents. While referring to the testimony of DW-1 Madan Gopal Dass, he has further contended that said witness has admitted in his cross-examination that the postal department had not made any false report due to ill will or with bad intention against the respondents, which makes it ample clear that the postal department in their ordinary course of duty had made the above said endorsement on all the six summons. He has vehemently contended that in fact the respondents knew from the beginning about pendency of suit and were watching the court proceedings and just before attachment of bank's account, they appeared before the Executing Court and the only object of the respondents was to delay the proceedings. But the trial Court has completely ignored the correct provisions of law and real intention of the respondents. No evidence was led by the respondents to challenge the authenticity of the endorsements made by the postal department on the summons received by the Court and the respondents had miserably failed to prove their case under Order IX Rule 13 CPC.

5. Per contra, it has been contended by learned counsel for the respondents that the respondents were never served in the case and they came to know about the exparte decree against them when summons in the

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Execution Application were received in their office on 09.02.2017. Thereafter, without any further delay, they initially appeared in the said execution case and thereafter filed an application under Order IX Rule 13 CPC for setting aside the exparte judgment and decree dated 30.01.2016.

6. In the present case, this Court has to examine if there was proper service upon the respondents. Vide order dated 26.10.2015 passed by learned trial Court, the respondents were ordered to be served through RC and through ordinary summons for 07.12.2015. On 07.12.2015, the RC was received with the report of refusal and as none appeared on behalf of the respondents, the respondents were proceeded against exparte.

7. Order 5 Rule 17 CPC deals with procedure when defendant refuses to accept the service or cannot be found. It specifically mandates that the serving officer shall affix copy of summon on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides and carries on business or personally works for gain and shall then return the original to the court from which it was issued, with the report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so and the name and address of the person by whom the house was identified and in whose presence the copy was affixed. As in the instant case, the aforesaid compliance has not been made, so the trial Court was right in observing that it was not a proper service in the eyes of law.

8. The counsel for respondents has also placed reliance upon the judgment in M/s Paras Ram Milkhi Ram vs. Sudarshan Tea Pvt. Ltd.

and another, 2022(2) R.C.R. (Civil) 562 and M/s Aar Kay Traders vs. M/s Satish Electronics, 2008(56) R.C.R. (Civil) 840 and has contended that as the respondents were living outside the territorial jurisdiction of the Court where suit was instituted, they could not have been served by way of registered post directly by the Court where suit was instituted. In the instant case, when admittedly the respondents were residing outside the territorial jurisdiction of the Court where the suit was instituted, that being so, service sought to be effected upon them by way of registered post acknowledgment due, directly by the Court where the suit was instituted, cannot be deemed to be proper service and the procedure adopted by the trial Court was contrary to the provisions of Order 5 Rules 9 and 21 CPC.

9. Thus, there being no illegality or infirmity in the impugned order, no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

11. As civil suit No.166 titled 'Bio-Age Equipment and another vs. A2Z Infrastructure Ltd. and another' pertains to the year 2015, so the trial Court is directed to dispose of the said suit expeditiously as per law.

(SUKHVINDER KAUR)
JUDGE

04.04.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No