



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

% ***Judgment reserved on: 23.02.2024***
Judgment pronounced on: 14.05.2024

+ CM(M) 137/2020, CM APPL. 4642/2020- Stay
M/S GARDENIA INDIA LTD & ANR Petitioners
Through: Mr. Amit Bhatia, Adv.

versus

DR RAKESH KUMAR (HUF) Respondent
Through: Mr. Manoj Mittal and Mr. Ishaan
Mittal, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioners are aggrieved by the order dated 25.09.2019 passed by the learned District Judge-04, North-West, Rohini Courts, Delhi (hereinafter referred to as "Trial Court") in Civil Suit bearing no. 662/2017, titled as "*Dr. Rakesh Kumar HUF vs. M/s Gardenia India Ltd. & Ors.*" wherein the learned Trial Court dismissed the application filed by the petitioners under Order IX Rule 7 of Civil Procedure Code, 1908 (hereinafter referred to as "CPC") for setting aside the ex-parte order dated 06.12.2018. Thus, the present petition has been preferred invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

2. Mr. Amit Bhatia, the learned counsel for petitioners submitted that petitioner no.1 is a body corporate and petitioner no.2 is the chairman of



petitioner no.1 who have been impleaded as defendant nos.1 and 2 in the suit filed by the respondent seeking recovery of Rs. 40,60,000/- with pendente lite and future interest. Further, Mr. Sanjeev Sharma is the Managing Director of petitioner no. 1 company and defendant no. 2 in the suit before the learned Trial Court (hereinafter referred to as “defendant no. 2”). The learned Trial Court vide order dated 11.08.2017 had issued summons of the suit and notice of the interim application against the petitioners returnable on 26.09.2017. However, on the said date of hearing, summons were issued afresh to petitioner nos.1 and 2 on filing of PF/RC returnable on 29.01.2018. As per the report appended by the Ahlmad on 27.01.2018, it has been stated that the “steps were not taken” for 29.01.2018.

3. The learned counsel also submitted that from 29.01.2018 till 06.12.2018, fresh summons were not ordered to be served upon petitioner nos.1 and 2 as the respondent and his counsel kept taking adjournments on one pretext or the other.

4. The learned counsel further submitted that in the meanwhile, the respondent had instituted a compliant case bearing no.23557/2016 titled as “*Dr. Rakesh Kumar HUF vs. M/s Gardenia India Ltd & Ors.*” under Section 138 of the Negotiable Instrument Act. The petitioner company received the summons of the aforesaid case and appeared before the Court of the learned Metropolitan Magistrate, where they moved an application for compounding the case. In view thereof, the compounding application was allowed and the petitioners deposited the entire payment of the dishonored cheques amounting to Rs. 26,68,150/- with interest at the rate of 9% per annum and litigation cost of Rs.25,000/-. The learned counsel



stated that during the pendency of the said complaint case, the respondent never informed the Court or the petitioners that a civil suit arising out of the same facts and on the basis of same dishonored cheques has been filed and is pending before the learned Trial Court.

5. The learned counsel submitted that on one occasion, an official of the petitioner company was trying to locate the orders of the complaint case and was shocked to discover on the website the pendency of a civil suit before the learned Trial Court. Thereafter, the petitioners engaged a counsel and upon inspection of the Trial Court record, it came to the knowledge of the petitioners that they had been proceeded ex-parte vide order dated 06.12.2018.

6. After learning of this ex-parte order, the petitioners moved an application under Order IX Rule 7 CPC wherein the petitioners put forth the facts and circumstances of the case including the fraud played upon by the respondent in manipulating the service report and filing false affidavits contrary to the judicial record. However, the learned Trial Court did not consider the above submissions and summarily dismissed the application moved on behalf of the petitioners.

7. The learned counsel also submitted that since the respondent was aware of the truth regarding the service reports, he did not even choose to furnish reply to the application moved on behalf of the petitioners under Order IX Rule 7 CPC. Nonetheless, the learned Trial Court chose to dismiss the application of the petitioners and imposed a cost of Rs. 5,000/-.

8. Mr. Manoj Mittal, the learned counsel for respondent controverted the submissions made on behalf of the petitioners and contended that the petitioners have filed an application seeking to set aside the ex-parte order



dated 06.12.2018 passed against them on false and concocted facts. It was also submitted that the learned Trial Court has passed a detailed order regarding the service reports and the steps taken by the respondent to serve the summons on the petitioners.

9. Further, the learned counsel submitted that the petitioners were well aware of the present proceedings and deliberately chose not only to avoid the summons of the present case but also failed to appear after being duly served with the summons, with the purpose of delaying the trial of the suit. This conduct of the petitioners has been aptly recorded by the learned Trial Court in the impugned order. It is submitted that the impugned order is based upon sound reasoning therefore does not require any interference by this Court.

10. Submissions heard. Impugned order passed by the learned Trial Court and the record perused.

11. The respondent instituted the present civil suit, which came to be listed before the learned Trial Court on 04.08.2017. However, on that date, the learned Presiding Officer was on leave and the matter was posted for consideration on 11.08.2017. On the said date of hearing, the summons of the suit and notice of the interim application were ordered to be served on the petitioners on filing of PF/RC, returnable on 29.09.2017.

12. The Ahlmad of the Court appended to his report that the summons were issued on 11.08.2017 and Mr. Sanjeev Sharma / defendant no. 2 was served with the summons on 16.09.2017. On the next date of hearing i.e. on 26.09.2017, the learned Trial Court accepted the report regarding service of defendant no. 2. However, the service report with respect to petitioner no.1 and petitioner no. 2 herein was awaited. Additionally, the



learned Trial Court passed directions for defendant no. 2 to file written statement within three weeks with copy to the opposite side and in the meanwhile, ordered for issuance of fresh summons of the suit and notice of the interim application against the petitioner nos. 1 and 2 returnable on 29.01.2018.

13. However, on 29.01.2018, the learned Presiding Officer was on leave and the respondent had moved an application under Order VIII Rule 1 and 10 CPC. For service of the petitioner nos. 1 & 2, steps were not taken by the respondent. On the subsequent date of hearing, no one had appeared on behalf of the petitioners and the matter was listed for 07.06.2018. On the said date of hearing, again there was no appearance on behalf of the petitioners. The counsel for the respondent requested an adjournment to furnish the service report on affidavit with respect to petitioner nos.1 and 2. Therefore, the matter was posted for adjourned for further proceedings to 12.07.2018.

14. On 12.07.2018, the learned counsel for the respondent filed the tracking report along with an application under Order VIII Rule 1 and 10 CPC and the matter was listed for consideration of this application on 04.08.2018, which was further adjourned to 11.09.2018. On the aforesaid date, the learned Presiding Officer was on leave and the matter was rescheduled for 09.10.2018. On that date, submissions were heard on the application of the respondent and it was listed for orders on 16.11.2018. On the said date of hearing, the matter was posted for another date, being 06.12.2018.

15. On 06.12.2018, the learned Trial Court observed that the counsel for the respondent had filed two original postal receipts, both dated



26.12.2017, in the name of petitioner nos.1 and 2 along with a copy of the tracking report which was already on record. Further, the learned Trial Court observed that the service of petitioner nos.1 and 2 was complete as per the tracking record and deemed it to be a due service. Since the petitioners did not put an appearance on 06.12.2018 till 02:12 P.M., consequently, they were proceeded ex-parte with the learned Trial Court holding that they were not interested in defending the case. The matter came to be listed for ex-parte evidence by way of affidavit on 11.01.2019. Thereafter, the application was moved on behalf of the petitioners to set aside the said ex-parte order, which came to be dismissed vide the impugned order.

16. Pertinently, the copy of the notice issued to the petitioners in the complaint case filed under Section 138 Negotiable Instrument Act has also been placed on record. From the said notice, it transpires that the same address of petitioners has been mentioned, which has been disclosed in the present suit. However, before the learned Metropolitan Magistrate, the notices were served on the petitioners and they appeared before the Court.

17. In the present case, it is undisputed that Mr. Sanjeev Sharma/defendant no.2 was served on the very first date i.e. on 16.09.2017. However, the issue is with respect to the service of petitioner no. 1 and 2.

18. The perusal of the record of the learned Trial Court shows that summons of the suit and notice of the interim application were sent for service for the first time on petitioner nos. 1 and 2 along with defendant no. 2 on 11.08.2017 and the service report with respect to petitioner nos.1 and 2 was not received. Accordingly, fresh service was directed however, the respondent did not take steps to serve them afresh. On the other hand,



learned counsel for the respondent had filed original postal receipts dated 26.12.2017 along with a tracking report to show that they were duly served which was accepted by the learned Trial Court. However, the respondent did not clarify the date when the said summons of the suit were issued for service of petitioner nos. 1 and 2 as the last summons have been issued by the learned Trial Court on 26.09.2017, returnable on 29.01.2018 and the Ahlmad of the Court had appended his report on 27.01.2018 stating that steps were not taken by the respondent.

19. En passant, no explanation has been given by the petitioners that Mr. Sanjeev Sharma/defendant no. 2, being the Managing Director of petitioner no. 1 company, who was served on the first occasion and was thus, aware about the proceedings of the case before learned Trial Court but failed to take any steps to get petitioner no. 1 represented before the learned Trial Court.

20. Having considered the above, the facts & circumstances as discerned, the impugned order dated 25.09.2019 is set aside and the ex-parte order dated 06.12.2018 passed by the learned Trial Court is recalled, subject to cost of Rs. 30,000/- (Rupees Thirty Thousand only) to be paid to the respondent by the petitioners on the next date of hearing before the learned Trial Court. Consequently, the petition along with pending application is allowed.

SHALINDER KAUR, J.

MAY 14, 2024

SDS