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

+ **C.R.P. 177/2023**

SANGEETA SARAN

.....Petitioner

Through: **Mr. Vijay Pal Sharma and Ms.
Saumya Sharma, Advocates.**

versus

DINESH KUMAR

.....Respondent

Through: **Mr. Santosh Kumar, Advocate.**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

04.10.2024

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1. Civil Revision Petition under Section 115 CPC has been filed on behalf of the Petitioner/Plaintiff to challenge the Order dated 20.03.2023 vide which the “*Leave to Defend*” Application under Order 37 Rule 3 CPC filed by the Respondent/Defendant, has been taken on record.
2. The Plaintiff had filed a Suit for Recovery of Rs.92,000/- under Order XXXVII CPC. The Respondent/Defendant had put in appearance pursuant to the service of *Summons for Appearance* on 01.11.2022. Immediately thereafter, the Leave to Defend Application under Order 37 Rule 3 CPC had been filed on behalf of the Respondent/Defendant even though no summons for judgment were directed to be issued by the Court.
3. On 20.03.2023 the matter was taken up by the Court and the



Application for issue of summons for judgment filed on behalf of the Plaintiff was allowed. On the same date the Leave to Defend Application which had been filed earlier by the Defendant, was also permitted to be taken on record.

4. The Petitioner/Plaintiff is aggrieved by the Order dated 20.03.2023 of taking the Leave to Defend Application on record by the Court.

5. Submissions Heard.

6. The record shows that the Plaintiff had filed a Suit for Recovery of Rs.92,000/- under Order XXXVII CPC on the basis of the written contract dated 09.09.2021 and the Statement of Account. Summons for appearance were issued in response to which the Defendant/Respondent put in their appearance on 12.11.2022. Thereafter, the Application dated 24.11.2022 for issuance of summons for judgment under Rule 3(4) of Order XXXVII was filed on behalf of the plaintiff, which was apparently handed over to counsel for the Respondent who was present in the Court. An objection was raised on behalf of the defendant in regard to maintainability of the present Suit under Order XXXVII CPC. On the oral submissions, the Court passed the following order on 24.11.2022 which reads as under:-

“24.11.2022

*Present : Sh. Somitra Saran, Ld Counsel for plaintiff.
Sh. Chandra Prakash, Ld. Counsel for defendant
Today, the matter is fixed for consideration on
leave to defend application on behalf of defendant.
Same is filed, considered and allowed.
Put up for filing of WS on 18.01.2023.”*



7. The respondent had challenged that the suit of the plaintiff is for recovery of alleged rent/license fee for operating the shop, but in fact the plaintiff has no right, title, interest in the suit shop. The suit under Order XXXVII CPC was not maintainable since there was no consolidated amount. Furthermore, the plaintiff was claiming interest on the amount, but no interest can be claimed on a determinate amount under Order XXXVII unless it is supported by any document.

8. The matter was thereafter, taken up on 18.01.2023 wherein it was noted that inadvertently in the Order dated 24.11.2022 it had been mentioned that the Leave to Defend has been filed, though in fact only a Leave for Appearance on behalf of the defendant, had been filed. It was further clarified that Application for issuance of summons for judgment under Order 37 Rule 3(4) CPC was moved on behalf of the plaintiff which was kept for consideration on 20.03.2023.

9. On 20.03.2023, the Leave to Defend Application under Order 37 Rule 3, filed on behalf of the defendant was taken on record. An objection was taken on behalf of the Plaintiff/Revisionist that the Leave to Defend has to be filed within 10 days from the service of summons and that the Leave to Defend cannot be taken on record. However, it was observed that the Appearance had been filed by the Defendant on 24.11.2022 which was within 10 days of service of summons. The Plaintiff was required to serve upon the defendant summons for judgment which never got formally issued. The Application of Defendant for Appearance was treated as Leave to



Defend which was allowed and the defendant was directed to file the written statement. However, on 18.01.2023 an Application for issuance of summons for judgment under Order 37 Rule 3(4) CPC was filed on behalf of the Plaintiff. Considering that no formal orders on the application for issuance of summons for judgment had been made on 18.01.2023, the same was considered on the said date and was allowed and, therefore, the Leave to Defend which had already been filed on behalf of the Defendant was taken on record.

10. As discussed above, the record of the Trial Court and the various Orders as detailed above, clearly reflect that there has been a huge confusion about the procedure to be followed under Order XXXVII CPC. The learned Civil Judge has firstly failed to even consider whether the suit was maintainable under Order XXXVII CPC or was an ordinary Suit.

11. Be that as it may, the Defendant had duly put in his appearance after service of summons for appearance. Thereafter, the learned Civil Judge fell into error in treating the appearance as seeking Leave to Defend which was allowed and the directions were issued for filing of written statement. However, subsequently realising the mistake when the formal Application for issuance of summons for judgment was filed on behalf of the Plaintiff/Revisionist, the said error was sought to be rectified and clarified in the Impugned Order dated 20.03.2023.

12. The learned Senior Civil Judge on noticing that the Application for *summons for judgment* has not been formally allowed, allowed the same and the Leave to Defend Application that had been filed earlier on behalf of the defendant, was taken on record.



13. Though there has been a huge confusion and an anomalous procedure has been adopted by the learned Civil Judge, but it cannot be lost sight of the fact that in a Summary Suit firstly, the summons for Appearance are required to be served wherein the defendant is required to put in the appearance within 10 days of service and to furnish/confirm the address for future correspondence. Thereafter, the Plaintiff is required to file a fresh Application for summons for judgment and on service of the summons for judgment, the defendant is required to file the Leave to Defend within 10 days, thereafter.

14. In the present case, the said procedure has been followed though with a lot of error which have been rectified eventually in the impugned Order.

15. It is apparent that there has been a confusion about the service of summons for appearance and for service of summons for judgment. The law is absolutely clear on this aspect that it is only after the summons for judgment under Order 37 Rule 3(4) have been served upon the defendant, that the responsibility of filing the leave to defend within 10 days by the defendant, arises. Even though the Leave to Defend had been filed by the defendant/respondent after the service of summons for appearance, the same cannot be taken on record till the service of summons for judgement is effected. Since technically the **Summons for Judgment** were deemed to have been issued on 20.03.2023 and deemed accepted by the defendant who was present in the Court through the counsel, the learned Trial Court has rightly observed that the leave to defend can be taken on record only after the service of summons for judgment and the leave to defend which was



already on record, was thus taken on record.

16. The grievance of the learned counsel for the Revisionist is that the 10 days had to be calculated from the date of service of summons of Appearance or from 24.11.2022 is erroneous, for it is only after the service of the summons for leave to defend under Order 37 Rule 3(4) is effected on the defendant, that the time limit of 10 days arises.

17. There is no infirmity in the impugned Order of the learned Trial Court. The Revision is hereby dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 4, 2024

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