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

+ C.R.P. 246/2023

SANJAY GUPTA & ANR.

.....Petitioners

Through: Mr. Sanjay Sharma and Mr.
Anshul Sharma, Advocate.

versus

ASTRANZA INC USA & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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05.11.2024

1. The revision Petition has been filed by the Petitioner (*Plaintiff in the Suit*) against the Order Dated 05.06.2023 vide which the Application of the Respondent No.1 Astranza Inc. (*defendant in the Suit*) under *Order XXXVII Rule 4 of the Code of Civil Procedure (hereinafter 'CPC')* was allowed and the Judgement and Decree dated 16.04.2019, was set aside.
2. Revisionist/Plaintiff had filed a Suit for Recovery of Rs.18,57,402/- along with *pendente lite* and future interest at the rate of 12% p. a., against Defendant No.1/Astranza Inc. and Defendant No.2/Sailesh Lunani, Director of Defendant No.1 Company.
3. The *Summons for Appearance* were directed to be served on the Defendants, under *Order XXXVII Rule 3* of the *CPC*. However, on an Application under Section 151 CPC filed on behalf of the Plaintiff, it was directed vide order dated 01.10.2018 that the Defendant be served afresh at the address supplied by the Plaintiff on PF RC for the date i.e. 05.12.2018.



Defendant No.2/Sailesh Lunani was directed to be served through process server in the Court of Sh. Anil Antil, learned Presiding Officer where the matter was stated to be listed on 01.11.2018.

4. The matter was taken up again on 15.12.2018 wherein it was observed that though the Order dated 01.10.2018 has been complied with but the report has not been received back. The Defendants were directed to be served afresh under *Order 37* if the *CPC* in the prescribed proforma on PF RC for 11.04.2019.

5. Apparently, the affidavit of service on behalf of the Plaintiff was filed on 24.12.2018 along with the report on summons. The summons had been served upon Defendant No.2 in person. The vakalatnama of the counsel on behalf of Defendant No.2 was also filed on 21.12.2018. Deeming it to be the service of the defendants, the *Suit was decreed vide judgment dated 16.04.2019*.

6. Thereafter, Execution of the Decree was filed before the Court in Kohlapur, Maharashtra but was subsequently transferred to Delhi. In the interregnum, an Application under *Order XXXVII Rule 4 CPC* was filed on behalf of Defendant No.1/Astranza Inc. on 05.08.2022 for setting aside of the Decree dated 16.04.2019. The learned ADJ referred to the various Orders in regard to the service of Defendant No.1 and concluded that the service on Defendant No.2/Shailish Lunani cannot be deemed to be a service on Defendant No.1 Company, which never got served.

7. Consequently, the judgment and decree dated 16.04.2019 was set aside by the impugned Order dated 05.06.2023 and the Plaintiff was directed to move an appropriate Application for issuance of summons for judgment.

8. Aggrieved by this Order, present Revision Petition has been filed.



9. Submissions Heard.

10. From the record, it is evident that the Summons were sent to Defendant No.1 in Astranza company through e-mail but the same was not served and were returned with the endorsement “*address not found*”. The Plaintiff/Revisionist has placed reliance on the data of the Respondent Company from the New Jersey Business Portal, which shows that on account of failure of the Company to file their address annually, the Company was suspended from 16.01.2017 to 19.03.2021. This explains the reason why the Summons through email could not be served. However, as rightly pointed out on behalf of the Plaintiff, the summons which were subsequently sent through email, have been duly received on behalf of Respondent No.1. because the suspension was revoked. The learned ADJ, therefore, was correct in observing that there has been no proper service of Defendant No.1 and has consequently set aside the judgment and decree dated 16.04.2019.

11. Pertinently, though the Plaintiff/Revisionist had been directed to move appropriate Application for issuance of summons for judgment, nothing has been done till date. It is also pertinent to observe that according to the Revisionist, no affidavit of Appearance till date, has been filed on behalf of the Respondents/Defendants.

12. In the given situation, the Revision is hereby dismissed with the observation that the Revisionist may proceed in accordance with law before the learned ADJ.

13. Revision is accordingly disposed of.

NEENA BANSAL KRISHNA, J

NOVEMBER 5, 2024

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