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

+ **C.R.P. 266/2019**

M/S ROYAL WINDSOR HOTEL Petitioner

Through: None.

versus

LORDS INN HOTELS & DEVELOPERS PVT LTD

..... Respondent

Through: Mr. Prabhat Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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14.02.2024

C.R.P. 266/2019, CM APPL. 50156/2019 (STAY), CM APPL. 50157/2019 (DELAY OF 63 DAY IN FILING), CM APPL. 8776/2024 (FOR CALLING OF PHYSICAL RECORD)

1. There is delay of 63 day in re-filing the present revision petition. Evidently, the impugned order, whereby the application of the petitioner/defendant under Order IX Rule 13 of the Code of Civil Procedure, 1908⁶ was dismissed on 01.08.2019 and the revision petition was filed on 21.08.2019.

2. The plea of petitioner is that the defects pointed out by the Registry could not be cleared as he applied for the certified copy of the entire trial Court record on 31.08.2019 and the same was made available on 20.09.2019. It is submitted that the petitioner had fallen ill and had been taking herbal therapy at home and then he met his counsel on 20.09.2019 and the matter has been re-filed.

⁶ CPC



3. Contrary to the aforesaid stand, when the matter came up for hearing on 21.11.2019, it was submitted that the petitioner was engaged in the treatment of his wife, who was suffering from Cancer and treatment was going on in several hospitals at Delhi and Gurgaon. Any how, although the petitioner was directed to despite the 50% of the decretal amount within two weeks with the Registrar General of this Court, subject to which execution of judgment dated 31.08.2016 was stayed, the same has not been complied with. Despite contradictory stand taken by the petitioner even if application for condonation of delay is allowed, I find that the present revision petition is devoid of any merits.

4. Suffice to state that the present suit was instituted by the respondent/plaintiff on 05.12.2014 under Order XXXVII of the CPC and *vide* order dated 20.01.2015 suit was treated as a simple recovery suit. Since the petitioner/defendant apparently despite service of the summons of the suit failed to appear, he was proceeded *ex parte* eventually resulting in *ex parte* judgment and decree dated 31.08.2015.

5. The application under Order IX Rule 13 of the CPC was filed claiming that he came to know about the impugned judgment and decree in the last week of December, 2017 on receipt of notice from the Court of learned District Judge, Nainital in Execution Petition No. 79/2017. Learned trial Court after referring to Order V Rule 9 of the CPC as well as provisions of Order IX Rule 13 of the CPC passed the impugned order and it would be expedient to extract the relevant portion of the order, which reads as follows:

“6. It is clear from Order 5 Rule 9 (5) CPC that when a report has been made by the postal employee or authorized person of courier services to the fact that defendant or his agent had refused



to take delivery of the postal articles containing the summons or refuses to accept the summons by other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that summons had delivery served upon the defendant.

7. Under Order 9 Rule 13 CPC it is provided that no Court shall set aside a decree passed ex-parte merely on the ground that there has been irregularity of summons, if it is specified that defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim. Learned counsel for plaintiff had relied on a case "*Satya Khurana vs. Suminder Singh Reen*" *FAO (OS) 492/2013 of Hon'ble High Court of Delhi* to support his contention in respect of the legal proposition.

8. From the record of the case, it is clear that applicant / defendant Sh. S.S. Narula was impleaded in the suit as defendant being the proprietor of M/s Royal Windsor Hotel having registered office at Rani Bagh, Kathgodam, Nainital, Uttarakhand. The defendant being the proprietor of a hotel in a city like Naintial had a permanent and known place / address. In his application applicant / defendant has not disputed the correctness of the address of defendant.

9. The perusal of the Trial Court Record reveals and it is also reflected from the contents of application under Order 9 Rule 13 CPC that summons were sent at the address of defendant many times not only through ordinary process but also through registered AD post. The proceedings reflect that applicant / defendant was proceeded ex-parte vide order dated 19.10.2015. It was observed in the said order that defendant is served through affixation on 16.10.2015. The report of the process server dated 16.10.2015 makes it clear that summon were served by way of affixation at the main gate of the hotel. Process server has mentioned the directions and location of the hotel and it is not disputed that correct address of defendant was mentioned in the summons. Process server has mentioned in his report on oath that as per directions he reached at the spot and enquired about Sh. S.S. Narula and the hotel Manager informed that recipient was out in Bangalore. The Manager told that it was not certain when recipient would come and he refused to accept the summons. Thereafter, the summons were served by way of affixation at the main gate of the hotel. From the facts, it is clear that summons were in the name of the proprietor of a hotel and were tendered to none-else but to the Hotel Manager and by all means the hotel Manager is considered to be the authorized representative of the proprietor of the hotel.

10. From the record it is dear that prior to the service of summons by way of affixation, summons were repeatedly sent through post and every-time the summons were received back with the report of refusal by hotel Manager. It is not the case of applicant that summons sent by post were not correctly addressed



or sufficiently stamped. After going through all the reports of postal authorities as well as the process server, I am convinced that summons were repeatedly sent through the post and were repeatedly refused by the hotel Manager of defendant. In my opinion, all the report of the postal authorities and the process server cannot be incorrect or manipulated one. I have no doubt that summons were repeatedly tendered by the postal authorities and the process server, but refused by the Manager of the hotel run by defendant and therefore, I have no hesitation to conclude that defendant was aware about the pendency of proceedings and date of hearing. In my view, in view of Order 5 Rule 9 (5) CPC and other provisions, defendant was duly served.

11. I do not find any merit in the contention of applicant / defendant that his wife was continuously hospitalized due to treatment of Cancer and therefore, he remained in Delhi, Gurgaon and other places and was not aware about the summons. Even if, the fact of the illness and treatment of the wife of applicant is taken as correct, it cannot be accepted that defendant never visited at the place of his hotel in the relevant time. It is almost impossible to believe that in such a long time defendant was not aware about the happenings and affairs of his hotel at Nainital and was not kept informed by Manager/employees of the hotel.

12. In my opinion, application is without any merit. Therefore, the application under Order 9 Rule 13 CPC is dismissed.”

6. A careful perusal of the aforesaid order would show that summons were repeatedly sent at the correct address of the petitioner and even at the Hotel being run by him, which was ordered to be affixed at any conspicuous part of the premises and even before that the service of summons had been refused by his Manager. Such aspects raise a strong assumption that the petitioner has been deliberately avoiding receiving summons to derail the trial. The petitioner has been taking contradictory stands, and therefore, he does not deserve any lenience either.

7. In view of the foregoing discussion, I find no illegality, perversity or incorrect approach adopted by the learned trial Court in dismissing the application under Order IX Rule 13 of the CPC.



8. The revision petition is accordingly dismissed. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

FEBRUARY 14, 2024/*sm*