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

+ C.R.P. 206/2022 & CM APPL. 54474/2022

PIYUSH GUPTA

.....Petitioner

Through: Mr.Pawanjeet Singh Bindra,Sr.
Advocate with Ms.Jyoti Gupta, Advocate.

versus

NADIRA DABIR

.....Respondent

Through: Mr.S.Hari Haran, Advocate (Through
VC)

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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01.10.2024

1. *A Revision Petition under Section 115 read with Section 151 CPC has been filed against the Order dated 15.09.2022 passed by learned ADJ, New Delhi, allowing the Application under Order IX Rule 13 CPC and setting aside the judgment/decreed dated 03.01.2019.*
2. *The petitioner/plaintiff had filed a Civil Suit bearing No.1283/2017 under Order XXXVII CPC for recovery of Rs.1,49,64,253/- along with pendent-lite and future interest against the respondent/defendant, which was subsequently treated as ordinary suit vide Order dated 05.03.2018. The two cheques issued by the respondent in discharge of the liabilities, on presentation got dishonoured. The Complaints under Section 138 Negotiable Instruments Act were filed, wherein the respondent failed to appear despite issue of NBW against respondent No.1. When the defendant No.1 could not traced, proceedings under Section 82 Cr.P.C were initiated against him vide Order dated 30.07.2018.*
3. *In the present suit for recovery of the suit amount, summons were issued*



through ordinary process and registered post, but the registered envelope was returned with the remarks “*unclaimed*”. Summons were also sent through courier, but the Courier report came “*party was out of town*”. The learned Trial Court proceeded ex-parte against the defendants on 03.05.2018. The evidence of the petitioner was recorded after which the suit was decreed vide judgment dated 03.01.2019.

4. The petitioner also made a Complaint of cheating by the Police who failed to take any action against the defendant. He thus, filed the Application under Section 156(3) Cr.P.C. which led to registration of FIR NO.170/2018 under Section 420/120B IPC at Police Station Vasant Vihar against the respondents.

5. The petitioner then filed a Caveat in this Court anticipating an Appeal by the respondents. The petitioner even filed an Execution Petition before the Bombay City Court, Dindoshi. However, the service was effected on the respondents through Publication in local Newspaper dated 16.04.2019.

6. The respondent No.2 appeared in the Execution proceedings and made a statement in the Court on 24.02.2021 that they are in the process of settlement. Thereafter, the respondents moved the Application under Order IX Rule 13 CPC for setting aside the ex-parte judgment.

7. The learned ADJ observed that from the record it was apparent that summons were only issued through PF & RC, but they also got sent through courier. The RC was unclaimed and as per the Courier report, the party was out of town. Therefore, it was not clear from the reports if there was any proper service of the summons upon respondent No.2. Considering the service upon respondent No.2 as insufficient, the Application under Order IX Rule 13 CPC was allowed and the judgment and decree dated 03.01.2019 had been set aside.

8. *The petitioner has challenged the impugned Order* on the grounds that it was not the case of the respondent that the address on the summons was incorrect. The



Envelope was returned with the stamp “*unclaimed*” which means that the respondent refused to accept the same. Having done so, the decree was passed after which a story has been weaved by the respondent asserting that she was not in town, but had gone to attend a wedding and was never served with the summons. Having refused to accept the summons, it did not lie with respondent to deny the service or to claim setting aside of the ex-parte decree. The defendants are habitual litigants, well aware of the court proceedings as number of matters are pending against them.

9. The track report and the postal remarks of the registered Envelope reflect that the postman had attempted to serve the summons twice and had even intimated defendant No.2, despite which she never came forth to claim the same. It is asserted that the service had been effected upon the respondents who were well aware of the pendency of the suit, despite which they intentionally did not appear and cannot now claim to have not been served with the summons of the suit.

10. It is further asserted that the *Demand Notice dated 25.10.2017* was issued to both the defendants before filing of the Civil Suit, which implies that they had full knowledge about the proceedings of the suit.

11. The *respondent in the counter-affidavit*, has denied all the averments made in the Revision Petition. The *preliminary objections have been taken*, wherein reference has been made to *Sambhaji & Ors. vs. Gangabai & Ors.* (2008) 17 SCC 117, in which it has been held that procedural law is not to be a tyrant but a servant; not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant not a resistant to the administration of justice. Likewise, reliance is placed on the case of *Jayshri Gajendra Mahajan & Ors. vs. Ganendra Pandit Mahajan* 2018 SCC OnLine Bom. 2233, wherein the Bombay High Court observed that where a Notice had been initially sent by Registered post and the Envelope is returned with the endorsement “*D/I on*



23.08.16 and 24.08.16”, it indicates that the intimation was given on 25.08.2016 despite which the addressee did not visit the post office for collecting the registered post envelope and it was returned as unserved. The envelope nowhere reflected that it had been refused by the Noticee; therefore, the summons were reissued through bailiff. That time the opponent was not there. The papers disclose that the Notice was issued for the first time on 13.06.2016 and was unserved since bailiff did not get sufficient time. It was held that even if there was refusal to accept the summons, the Order V Rule 17 of CPC mandates that the summons along with the plaint, should be affixed on the outer door or some other conspicuous part of the house. When no such effort is made and the only attempt made through bailiff was when the opponent was not in house, it cannot be held as valid service. Therefore, such judgment deserves to be set-aside.

12. It is thus, contended that the service in the present case has not been effected in accordance with Order V Rule 17 CPC.

13. The respondent has further stated that she got married in the year 2006 and was deserted by her husband in 2015, after which she has been residing separately. She has no relationship with him barring some rare and casual visits to meet the children. She has no contact with the respondent. She continues to live as a single mother. She further claims that she does not know the petitioner in any way and has never met him at any point of time. The entire averments made in the Petition are false and fabricated. The petitioner in fact has defrauded the Court to subvert the process of law by deliberately trying to draw the attention of the Court to his hollow display of service without making any actual efforts despite knowing that the respondent’s husband is residing in Riyadh. He has tried to deceive the court and involve the respondent in a transaction to which she was never a party. She had no knowledge or information about any transactions allegedly entered into between the petitioner and her husband. **On merits**, all the averments are denied.



It is also denied that she was ever served with summons of the Suit.

14. *The petitioner had also filed a rejoinder denying the allegations made by the respondent in the counter-affidavit.*

15. Submissions heard.

16. The record shows that the service had been affected on the respondent twice through ordinary and registered post. Both times, the Registered cover was returned with the remarks “unclaimed”. The summons though not directed to be served through Courier, had been sent, which also got returned as “*not available in town*”. Even though the Registered post may have been sent at the correct address, but the reports show that they were *unclaimed* and no presumption can be drawn that the respondent was aware of the summons or had intentionally avoided them as has been held in the case of Jayshri Gajendra Mahajan & Ors. (Supra). Even if it is deemed to be refusal by the respondent, then Order V Rule 17 CPC mandates pasting of the summons along with the plaint on the main door of any conspicuous part of the house. Since prescribed the procedure has not been followed, the learned ADJ has rightly observed that there was no proper service and has set aside the ex-parte judgment and decree dated 03.01.2019.

17. There is no infirmity in the Order of the learned ADJ dated 15.09.2022; the Revision Petition is hereby dismissed along with the pending Application.

NEENA BANSAL KRISHNA, J

OCTOBER 1, 2024

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