



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 17 May 2024**
Judgment pronounced on : 16 July 2024

+ C.R.P. 357/2023 & CM APPL. 25445/2024
VINOD YADAV & ORS. Petitioners
Through: Mr. Parikshit Mahipal & Mr.
Arvind Gupta, Advs.
versus
MAMTA YADAV Respondent
Through: Mr. Manjit Singh Chauhan,
Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
J U D G M E N T

1. The petitioners-revisionists, who are the defendants in a suit instituted by the respondent/plaintiff, have preferred the present civil revision petition under Section 115 of the Code of Civil Procedure Code, 1908¹ assailing the Impugned Order dated 11.10.2023 passed by the Learned Additional District Judge, Dwarka Courts, Delhi² dismissing their application under Order XXXVII Rule 4 CPC bearing MISC DJ ADJ 239/2022 titled as “*Mamta Yadav v. Vinod Yadav & Ors.*” for setting aside Judgment and Decree dated 30.04.2022 passed by the Learned ADJ in CS No. 828/2019 titled “*Mamta Yadav v. Smt. Vinod Yadav*”.

FACTUAL BACKGROUND:

2. Briefly stated, the respondent/plaintiff Ms. Mamta Yadav has instituted a suit under Order XXXVII CPC against the petitioners/defendants seeking recovery of money to the tune of

¹ CPC



Rs. 14,35,000/- along with *pendente lite* and future interest @ 12% per annum as well as cost of the suit.

3. Upon perusal of the pleadings, the facts and circumstances that have come up for consideration before this Court are that in 2015, the husband of the petitioner No.1/defendant No.1 i.e., Sh. Jagdish Yadav, took a friendly loan of Rupees Ten Lakhs from the respondent/plaintiff. Thereafter, in discharge of his liability towards the respondent/plaintiff, Sh. Jagdish Yadav issued two cheques in the year 2017 in favour of the respondent/plaintiff, however, upon presentation, such cheques were dishonoured on account of “Funds insufficient”, and for a second time due to “payment stopped by drawer”. Consequently, the respondent/plaintiff duly initiated complaint proceedings under Section 138 Negotiable Instruments Act, 1881 against Sh. Jagdish Yadav, husband of the petitioner no.1/defendant no.1, however such complaint proceedings abated due to the death of Sh. Jagdish Yadav.

4. As a result, the Respondent/plaintiff was constrained to issue a legal notice upon the petitioners/defendants which was duly delivered to the petitioners/defendants but was never replied to by them. Accordingly, the Respondent/plaintiff filed a suit for recovery under Order XXXVII CPC bearing CS No. 828/2019 titled “*Mamta Yadav v. Smt. Vinod Yadav*” against the legal heirs of Sh. Jagdish Yadav, i.e. the petitioners herein.

5. Despite being duly served with summons as per the summary procedure on 15.03.2021, the petitioners/defendants failed to put in an

² Learned ADJ/Trial Court



appearance within the prescribed time period of 10 days from the date of service of summons upon them, as required under Order XXXVII Rule 2(3) of CPC, and even failed to file the same till the date of the final disposal of the said suit. Accordingly, vide judgment dated 30.04.2022, the learned trial court deemed the allegations levelled by the respondent/plaintiff against the petitioners/defendants to be admitted by the petitioners/defendants and held that the respondent/plaintiff is entitled to a decree in her favour.

6. As per Judgment and Decree dated 30.04.2022, the suit of the respondent/plaintiff was decreed in her favour and against the petitioners/defendants for a sum of Rs.14,35,000/- (Rupees Fourteen Lacs Thirty Five Thousand only) with *pendente lite* and future interest @ 9% per annum from the date of filing of the suit till realization of the decretal amount.

7. Evidently, what precipitated the institution of this revision petition is that the petitioners/defendants, feeling aggrieved by the abovementioned Judgment and Decree dated 30.04.2022, filed an application under Order XXXVII Rule 4 read with Section 151 of CPC for setting aside of the Judgment and Decree dated 30.04.2022, which application came to be dismissed by the learned trial court *vide* its Order dated 11.10.2023.

IMPUGNED ORDER DATED 11.10.2023:

8. Based on the pleadings and oral arguments advanced by the rival parties, the learned Trial Court dismissed the application under Order XXXVII Rule 4 CPC filed by the petitioner/defendant on the ground that the petitioners/defendants failed to satisfy the court with



any “special circumstances” justifying their non-appearance in the summary proceedings so as to set aside the impugned judgment/decreed.

GROUND OF REVISION

9. The impugned order has been assailed by the petitioners/defendants firstly on the ground that the learned Trial Court did not appreciate that the summons dated 15.03.2021 were served to them in the midst of the COVID-19 pandemic and by orders of the Supreme Court, the period between 15.03.2020 till 20.02.2022 stands excluded for the purpose of limitation in respect of all judicial or quasi-judicial proceedings. It is contended that the COVID pandemic is the “special circumstance” that precluded the petitioners/defendants from entering appearance within the stipulated time of 10 days in the summary suit instituted by the respondent/plaintiff.

10. Secondly, the learned Trial Court did not appreciate that the petitioner no.3 herein was undergoing treatment at the Gobind Hospital, Gurgaon and also in National Drug Dependence Treatment Centre from 02.11.2019 till 30.11.2022 for allegedly being a drug addict besides suffering from depression on account of the untimely death of his father. It is also contended that the wife of petitioner no.3 was admitted in the hospital in the month of July 2021. Therefore, the petitioners/defendants were busy taking care of them which qualifies as another “special circumstance” preventing them from entering appearance upon service of summons and applying for ‘leave to defend’ in the said suit proceedings.



11. Thirdly, the impugned order has been assailed on merits of the case on the ground that the learned Trial Court failed to appreciate that the cheques in question were misused as they “*were given as earnest money, however the aforesaid transactions could not proceeded further due to financial issues...*” but it is alleged that the respondent/plaintiff retained such cheques despite assuring to return the same to Sh. Jagdish Yadav.

12. Lastly, the impugned order has been assailed on the ground that the Judgment and Decree dated 30.04.2022 is perverse to the rights of the petitioners/defendants as there does not exist any liability of the petitioners/defendants, being the legal representatives of Sh. Jagdish Yadav, towards the respondent/plaintiff since they have not inherited any estate of the deceased Sh. Jagdish Yadav.

ANALYSIS & DECISION

13. I have bestowed my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and I have also gone through the relevant material on the record of the case including the case law cited.

14. At the outset, the present revision petition is bereft of any merits. It would be apposite to reproduce the relevant portion of the impugned order dated 11.10.2023, which goes as under:

“9. Admittedly, summons for memo of appearance u/o Form 4 of Appendix B U/o XXXVII CPC were served on defendant on 15.03.2021. But, defendant failed to file memo of appearance even till passing of impugned judgment/order.

10. Order XXXVII Rule 2 CPC clearly provide that, once summons for appearance is served to defendant he is bound to enter appearance within IO days of service of said summons. Since, defendant failed to file memo of appearance within



stipulated period of impugned order/judgment passed against him on 30.04.2022.

11. Since, under Order XXXVII Rule 4 CPC main point to be considered is 'Special Circumstances' but, in present application defendants/applicants failed to give any 'special circumstances' to set aside the impugned judgment/decree.

12. It is well settled law that, in application u/o XXXVII CPC Rule 4 CPC while giving reason for non appearance, applicants/defendants is bound to set grounds on merits by which the plaintiff would not be entitled to a decree. But, in present application not even a single ground has been given by defendants/applicants which raised triable issue and disentitle the plaintiff for its claim. Thus, there is no ground for leave to defend in favour of defendants/applicants.

13. In view of above facts and circumstances, this court does not find any merit in the application u/o XXXVII Rule 4 r/w Section 151 CPC filed on behalf of defendants/applicants for setting aside judgment/decree dated 30.04.2022. Accordingly, same is dismissed.”

15. This Court is unable to find any flawed reasoning by the learned Trial Court in passing the aforesaid order. Reference can be invited to decision in the case of **Rajni Kumar v. Suresh Kumar Malhotra**³ wherein it was held as under:-

“9. The expression “special circumstances” is not defined in the Civil Procedure Code nor is it capable of any precise definition by the court because problems of human beings are so varied and complex. In its ordinary dictionary meaning it connotes something exceptional in character, extraordinary, significant, uncommon. It is an antonym of common, ordinary and general. It is neither practicable nor advisable to enumerate such circumstances. Non-service of summons will undoubtedly be a special circumstance. In an application under Order 37 Rule 4, the court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so unusual or extraordinary as to justify putting the clock back by setting aside the decree; to grant further relief in regard to post-decree matters, namely, staying or setting aside the execution and also in regard to pre-decree matters viz. to give leave to the defendant to appear to the summons and to defend the suit.”

³ (2003) 5 SCC 315



16. The crux of the matter is that ‘special circumstances’ must be such, the existence or non-existence of which should be such, that the Court ought to have taken notice thereof and could not have passed the decree otherwise.

17. Reverting back to the instant matter, the petitioners/defendants were duly served with the summons of the suit on 15.03.2021. We can discount the period when the whole country was in turmoil due to the COVID-19 pandemic situation. However, even after excluding such period of time, the petitioners i.e. the legal representatives of the deceased Sh. Jagdish Yadav, moved the application under Order XXXVII Rule 4 CPC belatedly i.e. on 30.05.2022.

18. Before parting with this revision petition, the plea of the learned counsel for the petitioner that the liability to pay any money to the respondent/plaintiff was personal to the deceased and it died with his death could only be countered by providing that the legal representatives/heirs of the deceased are liable to the extent of estate left behind by the deceased. The said aspect could only be addressed and be thrashed in the execution proceedings.

19. Accordingly, the present revision petition is dismissed.

20. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JULY 16, 2024

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