



2024:DHC:9718



\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: 10th December, 2024

+

C.R.P. 245/2024 & CM APPL. 47748-49/2024

SUNIL KUMAR JAIN

.....Petitioner

Through: Mr. Anuj Kapoor and Mr.
Shivom Sethi, Advocates.

versus

1. ANITA GUPTA
W/o Late Ajay Kumar Gupta,
Age: Not known
R/o H. No. 28/40, West Patel Nagar,
New Delhi ...Respondent no.1.
2. Urmila Gupta
W/o Shyam Gupta
Age: Not known
R/o H. No. 28/40, West Patel Nagar,
New Delhi ...Respondent no.2
Through: Mr. Rishabh Gupta, Mr. Himanshu
Gupta and Mr. Jay.K. Bhardwaj,
Advts.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Revision Petition under *Section 115* of the *Civil Procedure Code, 1908* has been filed on behalf of the Petitioner (*"Plaintiff/Decree Holder"*) to challenge the Order dated 03.01.2024 vide which the Application under *Order 9 Rule 13* of the *CPC* filed on behalf of Respondent (*"Defendant/Judgment Debtor"*), has been allowed.
2. The **brief background** is that against a loan of Rs.4 lakhs given



2024:DHC:9718



to Sh. Ajay Kumar Gupta, husband of Respondent No.1 and son of Respondent No.2, three cheques were issued. Rs.50,000/- got paid by Sh. Ajay Kumar Gupta, leaving a balance of Rs.3,47,000/- for which a **Civil Suit bearing No. CS No.126/09** was filed by the Petitioner/Plaintiff. The Defendants/Respondents could not be served and eventually service was affected by way of Publication.

3. An *ex parte* judgment dated 04.07.2012 was passed against the Respondent (Defendant) and the Suit was decreed in a sum of Rs.3,40,000/- along with interest @ 6% per annum.

4. In the interim, since Sh. Ajay Kumar Gupta expired, the Suit was continued against Respondent No.1 and 2 being the wife and mother/legal heirs of deceased Ajay Kumar Gupta.

5. Since the Respondents/Judgment Debtors was not traceable, the Execution Petition came to be filed in 2022, in which Warrants of Attachment were issued on 16.09.2022. Bailiff who was appointed, visited the house of the Respondent / Judgment Debtor on 28.09.2022 wherein Respondent No.1 gave a cheque of Rs.3 lakhs and made a statement that she would be appearing in the Court on the next date i.e. 02.12.2022 to sort out the matter.

6. Eventually, an Application under *Order 9 Rule 13 of the CPC* along with an Application under *Section 5 of the Limitation Act, 1963* was filed on 20.01.2023. *The Application was allowed vide impugned Order dated 03.01.2024* and the *ex parte* Decree has been set aside.

7. Aggrieved by the said Order, present Revision Petition has been filed.

8. Essentially, the main ground of challenge is that the Judgment



2024:DHC:9718



Debtor/Respondent No.1 had tendered part decretal amount to the Bailiff and having done so, she is estopped from filing the Application under *Order 9 Rule 13 of the CPC*.

9. Learned counsel for the Revisionist has drawn an analogy from Explanation to Rule 13 of Order 9 CPC which provides that if an Appeal has been preferred by the Judgment Debtor and the same has been disposed of other than being withdrawn, such person cannot challenge the *ex-parte* decree by way of an Application under Order 9 Rule 13. Similarly, because Judgment Debtor has partly honoured the decree by payment of Rs.3 lakhs, she was estopped from making an Application under Order 9 Rule 13 CPC, which was liable to be dismissed.

10. ***Learned counsel on behalf of the Respondent*** submits that from the record it is evident that they are not residing at the address at which service was sought to be made and eventually Publication was done. The record shows that the Respondents never got served. They came to know about the *ex parte* decree only when the Bailiff visited their house on 28.09.2022. The learned Trial Court has rightly appreciated the fact and allowed the Application under Order 9 Rule 13 CPC. It is, therefore, submitted that the Revision Petition is without merit and is liable to be dismissed.

11. **Submissions Heard.**

12. Pertinently, even as per the submissions made on behalf of the Petitioner, the Respondents were not residing at the address at which the service was sought to be affected, which was eventually affected through Publication at the address where admittedly the Respondents



2024:DHC:9718



were not residing at the relevant time.

13. It is also on record that the Decree Holder Revisionist took about 10 years to be able to trace the Judgment Debtors, to be able to file the Execution Petition.

14. In the circumstances, the learned Trial Court has rightly allowed the Application under Order 9 Rule 13 of the CPC read with Section 5 of the Limitation Act.

15. There is no infirmity in the impugned Order and the Revision is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 10, 2024

rk