



2024:DHC:7701-DB



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

+ **FAO(OS) 137/2024 & C.M.No.58002/2024**

RAJAT DILWALI

.....Appellant

Through: Mr.Raghav Kacker with Mr.Aayush
Shukla, Advocates.

versus

RAJESH KUMAR SINGH & ANR.

.....Respondents

Through: None

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Date of Decision: 03rd October, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the order dated 05th August, 2024 passed by the learned Single Judge in IA No. 18146 / 2022 in CS(OS) No. 616 / 2022. The underlying summary suit was filed by the Appellant (Plaintiff therein) seeking recovery of an alleged loan amount from the Respondents.

2. The Appellant had filed the aforesaid IA in the subject suit under Order XXXVII Rule 2(3) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') seeking a decree in default against the Defendants therein. The ground raised by the Appellant therein was that the advocate, Mr. Girijesh Pandey, had appeared on behalf of the Defendants/Respondents

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before the Joint Registrar on the hearing held on 18th October, 2022 and accepted summons; however, he failed to file the memo of appearance within the time period of ten days, as mandated by Order XXXVII Rule 3(1) of the CPC.

3. The learned Single Judge has dismissed the IA on the ground that that the advocate, Mr. Girijesh Pandey, after entering appearance in the Court during the hearing held on 18th October, 2022 and accepting summons on behalf of the Defendants had failed to file his Vakalatnama or memo of appearance as required under Order III CPC and Chapter V Rule 1 of the DHC Rules and therefore, merely entering appearance could not be considered as sufficient service of summons on the Defendants/Respondents.

4. Learned counsel for the Appellant states that the learned Single Judge has erred by not considering that the advocate, Mr. Girijesh Pandey had in his affidavit dated 09th January, 2023 (filed in I.A. No. 21526 / 2022 in the subject suit) expressly stated he had been authorized by the Respondents (Defendants therein) to accept summons on their behalf.

5. He states that the suit was served in advance to the Defendants/Respondents on 23rd September 2022. He contends that the Respondents/Defendants had not provided any explanation, as to how the advocate, Mr. Vijay Tiwari, forwarded the Complaint to Mr. Pandey, when the Respondents/Defendants had themselves disputed forwarding the copy of the Complaint to Mr. Vijay Tiwari *vide* their reply dated 14th April, 2023 filed in response to the application for interrogatories (IA No. 4123 / 2023) dated 27th February, 2023.



6. Learned counsel for the Appellant relies upon Order XXXVII Rule 3 (7) CPC as well as the judgment of the Supreme Court in ***Basawaraj & Anr. Special Land Acquisition Officer, (2013) 14 SCC 81***, wherein it has been held as under:-

“11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only *so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned*, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (*Vide Madanlal v. Shyamlal, (2002) 1 SCC 535 and Ram Nath Sao v. Gobardhan Sao, (2002) 3 SCC 195*)”

7. Having perused the paper book, this Court finds that the learned Single Judge after considering all averments and documents placed on record, has held as under:-

- (a) Not filing of a memo of appearance as per Order XXXVII CPC can have drastic consequences and therefore, the Court must satisfy itself with respect to strict compliance of service of summons.
- (b) Learned counsel for the Appellant had himself admitted that Mr. Girijesh Pandey had not filed any *vakalatnama* or memo of appearance after recording appearance on 18th October, 2022. Therefore, the engagement of Mr. Girijesh Pandey as a pleader on 18th October, 2022 has not been strictly proved. In such a case, the Appellant (Plaintiff therein) ought to have applied for issuance of summons to the Defendants under Order XXXVII Rule 2(2) CPC.
- (c) From a *prima facie* perusal of the affidavit of Mr. Girijesh Pandey and the whatsapp communication between him and Mr. Tiwari, it does not appear that Mr. Pandey was expressly requested to appear on 18th October, 2022 before the learned Joint Registrar. (It is clarified



that the Court has not expressed any opinion on the veracity of the affidavit)

(d) It is not in dispute that the Respondents/Defendants after being served with the Court notice promptly entered appearance and filed I.A. 22178/2022 seeking leave to defend.

(e) As no substantive document has been shown to prove that Mr. Girijesh Pandey was appointed as a pleader by the Respondents/Defendants to appear before the learned Joint Registrar on 18th October, 2022, it cannot be said that summons were strictly served upon the Defendants therein.

8. This Court is in respectful agreement with the aforesaid findings.

9. Further, as no negligence, inaction or lack of *bonafides* can be imputed to the Respondents/Defendants, the judgment of the Supreme Court in **Basawaraj & Anr.** (supra) has no application to the facts of the present case.

10. Accordingly, the present appeal along with the application is dismissed.

CHIEF JUSTICE

TUSHAR RAO GEDELA, J

OCTOBER 3, 2024
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