



2024:DHC:8236-DB



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

+ **FAO(OS) 151/2024 & C.M.Nos.62110-62111/2024**

VAIBHAV AHUJA

.....Appellant

Through: Mr.Ravi Kapoor with Ms.Gauri Puri,
Ms.Aditi Singhal and Mr.Rishabh
Tehlan, Advocates.

versus

CHANDNI CHOWDHARY AND ORS

.....Respondents

Through: Ms.Beenashaw N.Soni with
Ms.Mansi Jain and Ms.Ann Joseph,
Advocates for R-1.
Mr.Priyesh Mohan Srivastava,
Advocate for R-5 (Through VC)
Mr.Awijut Paliwal, Advocate for R-6.
Mr.Karn Bhardwaj with Mr.Rajat
Gaba, Mr.Saurabh Dahiya and
Mr.Shubham Singh, Advocates for R-
7.
Mr.Ajit Dayal with Ms.Meenakshi
Joshi and Ms.Aprajita Verma,
Advocates for R-8 & 9.

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Date of Decision: 22nd October, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed challenging the order dated 20th August, 2024 passed by the learned Single Judge in I.A No.30707/2024 in CS(OS) 333/2024. The underlying suit was filed by the Respondent No.1 (Plaintiff therein) *inter alia* seeking partition and declaration of her share in the

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subject properties bearing no. 30 Park Area, Karol Bagh, New Delhi and W/No. 20, H/No. BV/243, Sunder Nagar, Pathankot, Punjab – 145001 along with the movable properties of her mother, late Ms. Raj Rani Ahuja.

2. The application being I.A No.30707/2024 had been filed by the Appellant (Defendant No.1 therein) under Order IX Rule 7 of the Code of Civil Procedure, 1908 ('CPC') seeking recall of the order dated 26th February, 2024, whereby the Appellant's right to file the written statement was closed and the Appellant was proceeded *ex-parte*. The learned Single Judge had dismissed the said IA on the ground that despite being served on four separate occasions, the Appellant/Defendant No.1 had deliberately elected not to join the proceedings with an intent to delay the same.

3. Learned counsel for the Appellant states that the learned Single Judge failed to appreciate that the summons in the underlying suit were not served upon the Appellant in accordance with the procedure prescribed under CPC and the Delhi High Court Original Side Rules, 2018.

4. He further states that after making a single attempt at effecting service of summons upon the Appellant, which was returned unserved, the Defendant No.1 straightaway resorted to substituted service by filing an application under Order V Rule 20 CPC, without complying with the subsequent directions issued by the learned Joint Registrar *vide* order dated 25th July, 2023, wherein it was stated that fresh summons must be issued to the Appellant.

5. He states that the learned Single Judge failed to consider that the Appellant was only made aware about the underlying suit on 29th January, 2024 when the notice issued in CRL M.A. No.109/2024 in W.P (Crl.) No.1576/2023 titled "*Padma Ahuja & Ors. vs. State of NCT of Delhi &*



Ors” was brought to the notice of the Appellant.

6. Having heard the learned counsel for the Appellant and having perused the paper book, it is clear that multiple attempts to serve the Appellant were made. Moreover, the address of the Appellant, as mentioned in the memo of parties of the underlying suit, has not been disputed by the Appellant.

7. A perusal of the record reveals that the first attempt to serve the Appellant was made on four occasions in June and July 2023, in pursuance to order dated 24th May, 2023 passed in the civil suit, which was unsuccessful owing to the Appellant being unavailable despite repeated visits. The said service was made though email and WhatsApp as well. Subsequently, the Appellant was contacted on his mobile number by the process server and apprised of the summons, as recorded by the learned Single Judge by placing reliance on the report (duly attested by the Civil Judge, Sr. Division, Pathankot) of the process server dated 16th September, 2023. Moreover, summons were affixed on the door of the Appellant on 16th September, 2023.

8. It is also clear that the Appellant was served with notice in subsequent I.As filed in the underlying suit in August, 2023. Therefore, the submission of the learned counsel for the Appellant that the learned Joint Registrar’s order dated 25th July, 2023 was not complied with is baseless.

9. The learned Single Judge in the impugned order has succinctly recorded that the Appellant/Defendant No.1 was served at least on four separate occasions. The relevant paragraphs in the impugned order is reproduced hereinbelow:-

“10. The registry has in the office noting dated 09.10.2023 recorded that the process server [on 16.09.2023] had furnished a report duly attested by Civil



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Judge Sr. Division, Pathankot on 18.09.2023 that defendant no. 1 is avoiding the service of summons and therefore, summons have been affixed at the door of defendant no. 1. This Court had summoned the file of the registry which contains the actual report of the process server dated 16.09.2023. The process server has reported that he has visited the address of defendant no. 1 several times, however, upon learning of the arrival of the process server, defendant no. 1 becomes unavailable. The process server has reported that he reasonably believes that defendant no. 1 has knowledge of the pendency of the case and the summons. The process server has further reported that he has also contacted defendant no. 1 on his mobile no. 94640-70423 and apprised him about the summons. The process server has reported that in these facts he has affixed the copy of the summons and the suit on the door of the given address of defendant no. 1. The signatures of Ms. Poonam, Municipal Corporator Ward No. 27, Pathankot have been obtained on the summons as a proof of affixation. The affixation of summons under Order V Rule 17 CPC has therefore, been duly followed by the process server in this case.

xxx xxx xxx

16. To sum up, the record of this Court shows that defendant no. 1 avoided service of summons in this suit in June and July, 2023 though his servant Mr. Sudhakar was duly informed about the same. Thereafter, defendant no. 1 was in fact, served with notice on 16.09.2023 through ordinary process and e-mode i.e., mobile by the process server. In addition, defendant no.1 was also served with notice in I.A. No. 11627/2023 on 28.06.2023 on his mobile and through approved courier; and with notice in I.A. No. 15898/2023 on 23.08.2023 on his mobile and e-mail. Thus, the defendant no.1 as per the record was served on at least four separate occasions with summons and notices in the present proceedings, however, defendant no.1 elected to not join the proceedings.”

10. Consequently, this Court is in agreement with the view of the learned Single Judge that the Appellant/Plaintiff had deliberately been trying to avoid summons and had concealed the fact of affixation of the notices. Therefore, no ground for interference exists. Accordingly, the present appeal along with the applications is dismissed.

MANMOHAN, CJ**TUSHAR RAO GEDELA, J****OCTOBER 22, 2024/KA**

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