



2024:DHC:9828



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

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Date of Decision: 19.12.2024+ **RFA 790/2024, CM APPLS. 66887/2024, 66885/2024 & 66886/2024****JITENDER KUMAR TOMAR**

.....Appellant

Through: Mr. Rakesh Kumar, Advocate.

versus

JITENDER SINGH

.....Respondent

Through: None.

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T (ORAL)**

1. The appellant has challenged order and decree dated 23.07.2024 of the learned trial court whereby money recovery suit filed by the present respondent under Order XXXVII CPC was decreed against the appellant since despite service of summons for judgment, the appellant did not file any application for leave to defend.

2. Learned counsel for appellant submits that since the summons for judgment were not personally served on the appellant, the impugned order and decree are not sustainable. Learned counsel for appellant explains that summons for judgment were served only on his counsel, so he cannot be

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GIRISH KATHPALIA

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deprived of an opportunity to seek leave to defend. Even as regards the counsel, it is contended that the address of the counsel was the address of his chamber where many other advocates also sit.

3. The document Annexure A-6 is the certified copy of application of the appellant entering appearance under Order XXXVII Rule 3(1) CPC. The relevant extract from the said application is as follows:

“3. That the defendant hereunder furnishes his address for the service of notice to the defendant:-

*Jitender Kumar Tomar
S/o Sh. Sheo Singh
R/o H. no. C-22, Gali No. 2, Ekta Marg,
Main Nangli Vihar Extn., Barpola,
Najafgarh, Delhi – 1100043 .*

Mob. No. +91-9999682015

Through Counsel

*Sh. Prince Kumar
Chamber no. 537, Lawyers Building,
Dwarka Court, New Delhi.
Mob. No.: 9582800140
Email id.: advocateprincedubey@gmail.com”*

(emphasis supplied)

4. Admittedly, the summons for judgment were duly served at the address of counsel for appellant.

5. Learned counsel for appellant further contends that there were two addresses and on both addresses, the summons for judgment ought to have been served, which was not done. But this argument lacks merit as clearly it was mentioned that the address for service of summons is the appellant



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“through counsel” and even the email id submitted in the application was of the counsel only. It is the appellant only, who voluntarily and consciously pleaded before the trial court that service of summons for judgment be done at the chamber address of his counsel. Having done that, now the appellant cannot retract.

6. Learned counsel for appellant also contends that the suit itself was not maintainable under Order XXXVII CPC. But this contention also is completely devoid of merit as the suit was based on a cheque as pleaded in paragraph 10 of the plaint.

7. I am unable to find any infirmity in the impugned order and decree, so the same are upheld. The appeal as well as accompanying applications are dismissed.

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KATHPALIA

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**GIRISH KATHPALIA
(JUDGE)**

DECEMBER 19, 2024/ry

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