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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 29th November, 2024***+ **C.R.P. 355/2024, CM APPL. 69705/2024****TARUN NUHANI**

S/o Sh. Chander Bhan Nuhani
103 Rialto Tower, Omaxe Heights,
Sector 86, Faridabad, Haryana 121002.

.....Petitioner/Revisionist

Through: Mr. Francis Fernandes and Mr.
Shubham Agarwal, Advocates.

versus

1. **M/S HIGHTECH CONSTRUCTION CO. LTD.**

Through Vashisth Estates Limited
Through its Director
Director Regd. Office at: D-84, 2nd Floor,
Okhla Industrial Area, Phase-I,
South Delhi, New Delhi-110020.

2. **M/S SRS HIGHTECH AFFORDABLE HOMES**

Through: Director
202, 27, New Delhi House,
Barakhamba Road, Connaught Place,
New Delhi-110001.

Also at:

SRS Multiplex, Mezzanine Floor,
City Center, Sector-12,
Faridabad (Hry.)-121007.

.....Respondents

Through: None.

CORAM:



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HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 69704/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

C.R.P. 355/2024

3. A Civil Revision Petition under Section 115 read with Section 151 CPC 1908 has been filed against the Impugned Order dated 03.08.2024 vide which the Application filed on behalf of the Respondents/Defendants under Order IX Rule 13 CPC along with Section 5 Limitation Act has been allowed and the ex-parte Decree dated 11.05.2020 as well as Order dated 06.01.2020 has been set-aside.

4. *Learned counsel on behalf of the Petitioner/Plaintiff* in the main suit, has submitted that the Defendants/Respondents had been duly served through email on 01.05.2019, but he failed to appear. Subsequently, the Suit was decreed ex-parte on 06.01.2020 and the ex-parte Decree was passed on 11.05.2020. Thereafter, an Execution Petition got filed on behalf of the Petitioner/Plaintiff in 2022, summons of which were duly served to the Defendants in March, 2023. The objections were filed on behalf of the Respondent/Defendants before the Execution Court, on 25.07.2023.

5. Thereafter, the Application under Order IX Rule 13 CPC read with Section 5 Limitation Act was filed in September, 2023, wherein the Respondents/Defendants claimed that they never received the summons. However, the Report on the summons sent by the Nazarat Branch, clearly stated that the summons were duly served on the email of the Respondent.



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6. Furthermore, as per their own saying, they came to know about the ex-parte Decree in March, 2023, but the Application under Order IX Rule 13 CPC had been filed only in September, 2023 even though the objections in Execution Petition got filed in July, 2023, which was beyond limitation. The reason for delay in moving the Application under Order IX Rule 13 CPC has been explained by stating that the decision to file the Application was pending in Board Meeting and also that the Respondent/Defendant was suffering from Cancer.

7. *Learned counsel on behalf of the Petitioner has argued* that though the Respondent/Defendants had asserted that it had changed its email, but the documents relied upon by them clearly reflect that the email change has been effected in 2023. The service had been duly affected through email in 2019 after which the Respondent chose not to appear. There was due service and there was no cogent explanation for non-appearance. Thus, the ex-parte Decree dated 11.05.2020 should not have been set aside.

8. It is further argued that despite having come to know about the ex-parte Decree in March, 2023 the reason of his ailment to explain further delay in filing the Application till September, 2023 clearly reflects the afterthought in filing the Application. This is more so as the Objections in the Execution Petition on behalf of the defendant got filed in July, 2023.

9. Thus, the impugned Order suffers from legal infirmity and is liable to be set aside.

10. **Submissions heard and record perused.**

11. *Briefly stated, Civil Suit No.284/2019* was filed by the Revisionist/Plaintiff for recovery of an amount of Rs. 4,68,379/- along with



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pre-suit interest and pendent-lite interest from Defendant No.1 and 2/Respondents.

12. The summons were directed to be served through PF & RC and email on 04.04.2019 but were received back with the Report “left” as recorded in the Order dated 13.05.2019.

13. The summons were issued afresh through PF & RC on the fresh addresses of the Defendants provided by the Plaintiff/Revisionist. However, they were also returned unserved with the Report “left” as per Order dated 06.01.2020. It was further observed in Order dated 06.01.2020 that the summons that had earlier been issued through email by the Nazarat Branch, had been served and deeming it to be proper service, since none appeared on behalf of the Defendants, they were proceeded ex-parte.

14. After recording of ex-parte evidence, the ex-parte Judgment dated 11.05.2020 was made whereby the Suit was decreed in the sum of Rs.4,68,379/- along with interest @ 15% per annum for the pre-suit period and for pendent-lite period and future period in favor of the Plaintiff.

15. The plaintiff then filed the Execution Petition, the notice of which was issued by the Court at Faridabad, Haryana at the fresh address of the Defendant No.1/Respondent and upon receiving the said Notice, the Application under Order IX Rule 13 CPC 1908 along with Section 5 Limitation Act was filed in September, 2023.

16. Pertinently, the Court record reflects that the Defendants could not be served through Summons on the two addresses furnished by the Plaintiff and both times they were returned with an endorsement “left”. However, on the first date, the summons had been also directed to be served through email



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and the Report therein was considered after the second Order for issuing the fresh summons was passed. Thus, *vide* the Order dated 06.01.2020, the service on the email ID i.e. “rsethassociates@gmail.com” was held to be valid, and the Court proceeded ex-parte after deeming it proper service.

17. However, while considering the *Application under Order IX Rule 13 CPC, 1908* the District Judge observed that this email address was of the Chartered Accountant of the Defendant No.2 Company. The correct ID of Defendant No.1 Company is “high-tech.group@yahoo.com”, which according to the Defendants was well within the knowledge of the Plaintiff as it was mentioned on the Letter Heads of the defendants, as filed along with the Plaint and even tendered in evidence as Ex.PW1/12.

18. The Plaintiff had tried to justify the service by asserting that email ID “rsethassociates@gmail.com” was in fact the email of the defendant/Company mentioned in the updated Master Data on the web site portal of Ministry of Corporate Affairs and the allegedly correct e-mail id “high-tech.group@yahoo.com” had not been updated on the web site portal.

19. However, the learned District Judge rightly observed that even though the service had been effected in the email of the Chartered Accountant, the same may not have been in use and when the correct email of the Company was well within the knowledge of the Plaintiff, the service on the email address of Chartered Accountant, cannot be considered to be proper service.

20. It has not been asserted by the Plaintiff that he was not aware of the email address of the Defendants which was indicated on the Letter Heads, in the Plaint and as well in the Ex.PW1/12.

21. Despite being aware of the correct email address, the summons were



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sent on the email address of the Chartered Accountant. That may be the address available on the MCA portal, but it is a known fact that at times the MCA portal does not get updated on the regular basis. The service on the Chartered Accountant of the Company, cannot be held to be a valid service especially when the email of the Defendant Company was well within the knowledge of the Plaintiff and when the summons sent twice on the two addresses of the Defendant had been returned unserved with the endorsement "left".

22. The learned District Judge has rightly allowed the Application under Order IX Rule 13 of the CPC and Section 5 of the Limitation Act *vide* the impugned Order dated 03.08.2024 and set aside the ex-parte Judgment and Decree dated 11.05.2020.

23. There is no merit in the present Revision Petition, which is hereby dismissed, along with the pending Application(s) if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 29, 2024

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