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

% **Judgment reserved on : 26 February 2024**
Judgment pronounced on : 09 April 2024

+ C.R.P. 128/2018 & CM APPL. 25952/2018

MANISH GUPTA Petitioner

Through: Ms. Ritika Davis, Adv.

versus

M/S P SINGH CHIT FUND PVT LTD Respondent

Through: Mr. Parminder Singh, AR of
respondent in person.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This Court heard the arguments advanced by Mr. Parminder Singh, Authorised Representative of the respondent company, who appeared in person. Although learned counsel for the petitioner was seeking accommodation for the main counsel being not available and was granted liberty to file short submissions within two weeks, the needful has not been done. Since this revision raised a trivial issue of law and fact, this Court has proceeded to decide the same.

2. Shorn of unnecessary details, the respondent/plaintiff company is a Chit Fund Company, which instituted a suit for recovery under Order XXXVII Rule 4 of the Code of Civil Procedure, 1908¹ against the petitioner/defendant for recovery of Rs. 90,000/- with interest @

¹ CPC



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24% per annum from the date of dishonour of the cheque i.e. 06.10.2015 till realization.

3. Since no appearance was put by the petitioner/defendant despite service of summons in the prescribed form under Order XXXVII Rule 3(2) of the CPC, the learned Trial Court decreed the suit for an amount of Rs. 90,000/- but holding that the same was payable with interest @ 8% per annum, as the claimed interest @ 24% was exorbitant.

4. The impugned judgment dated 10.03.2017 is assailed on various grounds in the present matter. It appears that the petitioner/defendant moved an application under Order IX Rule 13 of the CPC, which, vide impugned order dated 23.05.2018 came to be dismissed by assigning the following reasons:

“23.05.2018

At 3.30 pm.

Present: Plaintiff in person.

None for the defendant.

Vide present order, I shall dispose off the application filed by defendant under order 9 rule 13 CPC.

The present suit was filed under order 37 CPC and was decreed on 10.03.2017. Subsequently, the present application was moved. During the arguments, it was prayed that the same may be considered under order 37 of CPC. As per defendant, he never received the summons issued by the trial court on 20.02.2017 and the report of process server has been manipulated. As per file the summons were received on 20.02.2017 by one Satbir who received the same as an employee of the defendant. In the subsequent development, the defendant filed an affidavit of said Satbir wherein he claimed that he sells clothes of the firm of defendant on commission basis and visits the shop of defendant regularly. As per his- affidavit, he had received the summons from the trial court on 14.02.2017 with the present case title and subsequently on 20.02.2017 he again received summons from the trial court with the same title. He has claimed that he is not much literate and is not able to understand english and therefore he thought that both



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summons are same and therefore he had not given the second summons received by him on 20.02.2017.

On the contrary, the plaintiff has argued that defendant was very much in knowledge of the summons/court proceedings. The plaintiff has submitted that there are number of cases between the parties but the summons issued in another case with the same title were received on 14.02.2017 by the defendant himself. Certified copy of such summons have been filed. It is submitted that the said employee Satbir had received the summons for another case between the parties on 17.03.2017. Certified copy of the said summons have also been filed. Accordingly, it is prayed that the defendant has taken a false plea and even his employee has filed a false affidavit.

It is not disputed that the summons of the present case had been received by said Satbir on 20.02.2017. However, from the documents filed by plaintiff it apparent that no summons were received by him on 14.02.2017 as claimed and rather summons on 17.03.2017 were received by him in regard to the other case. In the given circumstances, the summons of the present case were the first summons received by said person on behalf of defendant. As per said person he handed over first summons to defendants but did not give second summons to defendant. Therefore, the summons of present case were received by the defendant being the first summons. As per order 37 rule 4 CPC the court may set aside the decree only under special circumstances. However, in view of aforesaid observations, no such circumstances is made out as court is of the view that summons were received by the defendant. Hence, application is dismissed.

File be consigned to record room after due compliance.”

5. The long and short of the aforesaid reasoning is that summons were received by one Mr. Satbir on behalf of the petitioner/defendant on 20.02.2017 and no summons were issued for 14.02.2017, rather summons in another case between the same parties bearing No. SCJ/103/2017 were received on 17.03.2017. Be that as it may, when multiple suits were being filed by the plaintiff and summons were being issued, there was bound to be some confusion or the other in the mind of the petitioner/defendant, since it appears that Mr. Satbir was a person who was not so well educated. Further, if the case of the



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petitioner/defendant is believed, Mr. Satbir was a regular customer on his shop and was not his agent or employee for that matter. Considering that the respondent/plaintiff is a Chit Fund Company, it is but necessary that the petitioner/defendant be given an opportunity to defend the proceedings in accordance with law since his plea that he was not duly served with the summons in the suit appears to be well made out.

6. Accordingly, the impugned order dated 23.05.2018 is hereby set aside.

7. This Court on entertaining the revision petition, directed the petitioner/defendant to deposit a sum of Rs. 45,000/- by way of Fixed Deposit Receipt [“FDR”] with the learned Trial Court within one week thereof, with the direction that the FDR be converted into ‘Auto Renewal Mode’, and also stayed the operation of the execution proceedings.

8. The petitioner/defendant shall file appearance in terms of Order XXXVII Rule 3(2) of the CPC within 10 days from today and thereafter the learned Trial Court shall proceed with the matter in accordance with the law. Let the matter be listed before the learned Trial Court for appropriate proceedings/orders on 01.06.2024.

9. A copy of this order be sent to the learned Trial Court for information and necessary compliance.

10. The present revision petition along with pending application stands disposed of.

DHARMESH SHARMA, J.

APRIL 09, 2024/*Sadiq*