

AD-13
Ct No.16
14.02.2025
TN

CO 3707 of 2024

Kaiser Parwez
Vs.
Dewar's Garage Ltd.

Ms. Asia Hasan,
Ms. Akansha Yadav,
Ms. Sakshi Tiwari

.... for the petitioner

Mr. Raj Mohan Chatteraj,
Mr. Tanmoy Sett,
Ms. Mehboob Rahman

.... for the opposite party

1. Affidavit-of-service filed today be kept on record.
2. Heard learned counsel for the parties.
3. The present application under Article 227 of the Constitution of India has been preferred against an order whereby the petitioner's written statement has been refused to be accepted by the learned Trial Judge and the suit has been fixed for *ex parte* hearing.
4. Learned counsel for the defendant/petitioner argues that no copy of the plaint was served along with the summons on the defendant/petitioner at any point of time. It is contended that despite the petitioner having filed repeated applications before the trial court indicating that no copy of the plaint but only the injunction application had been served on the defendant, the court brushed aside such contention and merely reiterated that the matter has already been fixed on the *ex parte* board.

5. It is further argued that the defendant/petitioner subsequently got to have a copy of the plaint which was annexed to a writ petition filed in this court and accordingly filed his written statement on December 19, 2022.
6. However, by the impugned order, the learned Trial Judge refused to accept the written statement by completely overlooking the fact that the rigours of Order VIII Rule 1 of the Code of Civil Procedure were not applicable since no copies of the plaint had been served at any point of time along with the summons on the defendant, thus rendering the service of summons incomplete.
7. Learned counsel appearing for the plaintiff/opposite party argues that it will be evident from the injunction order passed by the learned Trial Judge on August 22, 2022 that learned counsel for the defendant in the court below had clearly submitted that in the prayer part of the injunction application, the plaintiff has prayed for relief which he has not mentioned in the prayer part of the plaint. Hence, it is submitted that it is obvious that the defendant, even at that juncture, that is, on August 22, 2022, had a copy of the plaint containing its prayers.
8. Learned counsel for the plaintiff/opposite party further submits that the conduct of the defendant/petitioner is deplorable. The petitioner has filed numerous applications in the court below to

stall the suit and several times the suit was taken off the *ex parte* board on different grounds taken by the petitioner.

9. Learned counsel for the opposite party further places reliance on the order of the learned Trial Judge dated November 19, 2020 where it was categorically recorded that the track report shows that summons and notice were duly served on the defendant. Thus, presumption of correctness pertaining to official/judicial acts has to be attached to the said order. The said order has never been challenged by the defendant/petitioner before any forum.
10. In the absence of any explanation as to the delay in filing the written statement thereafter, it is contended that the learned Trial Judge was justified in refusing to accept the written statement and fixed the suit for *ex parte* hearing.
11. Learned counsel for the opposite party further adds that the order dated November 19, 2020 was based on a bailiff's report. However, it has to be kept in mind that the bailiff's report pertained to the summons served through court, whereas service had been directed to be effected both ways and the track report clearly indicated that summons along with the plaint was duly served by postal mode.
12. It is also pointed out that an application for recall of the order impugned herein is pending at the behest of the defendant in the trial court.

13. Upon hearing learned counsel, I find that certain doubts arise as to whether the summons, along with a copy of the plaint, was properly served on the defendant/petitioner.
14. From the bailiff's report annexed at pages 23 and 24 of the present revisional application, I find that the bailiff observed that the defendant/present petitioner read the contents of the notice and petition and accepted copy of the same on "granting his signature above".
15. Hence, even from the bailiff's report it transpires that it was a notice and a "petition" which had been served on the defendant, creating an impression that it was the injunction application, as contended by the defendant, and not the plaint which was served on the defendant.
16. Learned counsel for the plaintiff/opposite party has harped on the order dated November 19, 2020. The said order records that the track report showed that summons and notice were duly served. However, the postal receipt and the track report served by way of alternative mode of service as contemplated under Order V Rule 9 of the Code of Civil Procedure cannot be a conclusive proof of service of the plaint, particularly in the context of the present circumstances. Since proper service of summons sought to be effected through court is doubtful as the bailiff's report states that only a petition was served

along with the summons and not the plaint, there cannot be any reason to deem the alternative service, effected directly through postal mode, to be sacrosanct. The malady which vitiated the service of summons through court might very well have afflicted the alternative service as well.

17. As such, there is some doubt as to whether the defendant had got a copy of the plaint prior to getting the copy of the writ petition where the said copy was annexed.
18. Thus, I find that there was sufficient reason for the written statement to be filed late by the defendant, only after having obtained a copy of the plaint as annexed to the writ petition filed in this court. Since the written statement had been filed on December 19, 2022, the learned Trial Judge, after almost two years thereafter, could not have refused to accept the same merely on the ground that no petition has been filed for condonation of delay.
19. There is no applicability of Section 5 of the Limitation Act to a written statement. The court always has the inherent discretion under Section 148, read with Section 151, of the Code of Civil Procedure to enlarge the time for filing written statement.
20. In the present case, in view of sufficient doubt having been created as to the defendant having received the copy of the plaint late, which was repeatedly reiterated by the defendant/petitioner in his

applications in the trial court, it was for the learned Trial Judge to take a liberal approach, in line with the judgment in *Desh Raj vs. Balkishan (Dead) through proposed legal representative*, reported at (2020) 2 SCC 708, which was cited before the learned Trial Judge, and to accept the written statement and take the suit off the *ex parte* board.

21. In such view of the matter, this court is of the opinion that the impugned order suffers from jurisdictional error.
22. Accordingly, CO 3707 of 2024 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 27 dated August 29, 2024, and directing the learned Trial Judge to accept the written statement filed by the defendant/revisionist petitioner on December 19, 2022. The suit be taken off the *ex parte* hearing board.
23. In view of the delay occasioned in disposal of the suit, the learned Trial Judge is requested to endeavour to dispose of the suit as expeditiously as the business of the said court permits.
24. There will be no order as to costs.
25. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)