



2025:DHC:587



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

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Date of Decision: 31.01.2025+ **RFA 87/2025, CM APPLs. 6173/2025, 6172/2025, 6170/2025 & 6171/2025****M/S GREATECH TELECOM TECHNOLOGIES PVT LTD**

.....Appellant

Through: Mr. Navdeep Singh, Advocate

versus

M/S CORPORATE ENTERPRISES

.....Respondent

Through: None

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

1. The appellant has assailed judgment and decree passed under Order XXXVII CPC for recovery of Rs.7,01,433/-. The summary suit filed by the present respondent was decreed since the appellant failed to enter appearance under Order XXXVII CPC despite service of summons in the prescribed format.

2. Having heard learned counsel for appellant, who took me through records, I do not find any reason to even issue notice of the appeal.

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3. As reflected from records, the present respondent, a proprietorship concern filed a suit against the appellant for recovery of Rs. 7,01,433/-, pleading that towards the outstanding payment according to the running accounts in business maintained by both sides, the appellant issued two cheques, to the total tune of Rs.4,00,000/- in favour of the present respondent, but both cheques got dishonoured for the reasons that funds to the credit of appellant in its bank account were insufficient. According to the present respondent, a total outstanding liability of Rs.7,01,433/-, inclusive of the cheque amount of Rs.4,00,000/- remains admitted in the book accounts of both sides supported by the relevant invoices of goods admittedly supplied.

4. The abovesaid plaint of the respondent was registered as a summary suit and summons in the prescribed format to enter appearance under Order XXXVII CPC were issued and duly served on the appellant. According to the impugned judgment, the summons to enter appearance were served on the appellant on 30.06.2018 but no appearance was entered, disclosing the address on which summons for judgment had to be served. Further, it appears from records that the appellant filed only an application dated 02.07.2018 for condonation of delay seeking leave to defend. Neither any formal appearance was entered nor any application for condonation of delay in doing so was filed.



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5. According to learned counsel for appellant, the summons to enter appearance were served on 22.05.2018 at the Dehradun factory of the appellant, from where the same were transmitted to the Delhi Office of the appellant. But admittedly even thereafter, the appellant did not enter appearance alongwith an application for condonation of delay.

6. Learned counsel for appellant emphatically contends that the respondent obtained the impugned judgment and decree by playing fraud on the court. The alleged fraud, as explained by learned counsel for appellant is that the respondent concealed from the court having already received a sum of Rs. 3,00,000/- towards full and final settlement of outstanding liability. It is argued by learned counsel for appellant that for this reason, the suit itself is liable to be dismissed.

7. No doubt, in case of fraud, a civil suit is liable to be dismissed. But in the present matrix, it is nobody's case that the alleged fraud was qua issuance and service of summons to enter appearance. The plea of the alleged fraud and the alleged payment of Rs. 3,00,000/- could have been raised by the appellant only through an application for leave to defend, which could be filed only upon service of summons for judgment, which in turn could be issued only upon the appellant entering appearance under Order XXXVII CPC. The technicality based scheme of Order XXXVII CPC



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cannot be ignored by the court, much less by either of the litigant.

8. Considering the above circumstances, I am unable to find any infirmity in the impugned judgment and decree, so the same are upheld. The appeal and the accompanying applications are dismissed.

**GIRISH
KATHPALIA**

Digitally signed by GIRISH KATHPALIA
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GIRISH KATHPALIA, J.

JANUARY 31, 2025/as/ry