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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 66/2025**
ARGHA CHATTERJEEAppellant
Through: Ms. Ritika Mitra, Adv.
versus
STATE BANK OF INDIA & ANR.Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

ORDER
% **04.03.2025**
CM APPL. 13117/2025 (Exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

FAO (COMM) 66/2025

1. The instant appeal is directed against the order dated 29 October 2024, pursuant to which the application referable to Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 ['CPC'] has come to be rejected by the Trial Judge.

2. We find that while dealing with the issue of service of summons, the Trial Judge has observed as follows:

“6. The perusal of the record reveals that the process server had reported on the summon that defendant no. 1 was served the summons on his abovesaid email id and also on his whatsapp of abovesaid phone number and he was also telephonically informed by the process server for the next date of hearing, as 16.12.2020. but, on dated 16.12.2020, no one had appeared on behalf of the defendant no. 1 and even on subsequent date, no one had appeared on behalf of the defendant and vide order dated 10.02.2021, the predecessor of this Court was pleased to proceed exparte against the defendant no. 1 and the predecessor of this Court, vide exparte judgment dated 15.04.2023 was pleased to decree the suit of the plaintiff. The present application under Order 9 Rule 13 of CPC has been filed by the defendant no. online on dated 25.04.2024.



7. Since the report of process server reveals that the defendant no.1 was served through email and Whatsapp on his mobile phone number on dated 25.11.2020, the correctness of email ID and phone number of the defendant no. 1 as mentioned in the said summon, is not disputed in this application under consideration. The process server has also stated that he had also telephonically informed to the defendant no.1, so, I have no ground to to disbelieve the report of the process server, which reveals that the defendant no.1 was served summons through email and whatsapp on dated 25.11.2020 for 16.12.2020. But despite of service of the summons to the defendant no.1, he failed to appear in the court on 16.12.2020 and also on subsequent date of hearing and vide order dated 10.02.2021, the defendant no.1 was proceeded exparte and exparte judgment was passed on dated 15.04.2023. Since this court has come to the conclusion that there was no infirmity in the services of the summons to defendant no.1 through email and Whatsapp on dated 25.11.2020. Therefore, I am inclined to hold that the fact of pendency of the said civil suit against defendant no.1, was well within the knowledge of the defendant since 25.11.2020. Therefore, the passing of exparte judgment dated 15.04.2023 also must be within the knowledge of the defendant no.1, but defendant no.1 remained negligent in persuing the lis pending against him.”

3. Although it was sought to be vehemently contended before us that the appellant had stoutly denied the service of summons as would be evident from the averments which were taken in the rejoinder submission which was filed, we find ourselves unable to sustain that submission for the following reasons.

4. It becomes relevant to note that in the rejoinder submission which was filed before the Trial Judge, the appellant had averred as follows:

“1. That the contents of para No.1 of the Preliminary Objections is wrong, false and denied. It is submitted that the Defendant No.1 was informed by the Plaintiff's counsel Shri Jeewan Prakash Gupta Advocate vide letter dtd.23.03.2024 about the impugned judgment dtd.15.04.2023 i.e. 01 year after the passing of the ex-parte judgment. That upon receiving the knowledge of the impugned judgment the Defendant No. 1 filed the present Application within the stipulated time period. That thus if there is any delay that is on the part of the Plaintiff to inform the Defendant No. 1 about the ex-



parte Judgment and there is no delay on the part of the Defendant No.1.

2. That the contents of para No.2 of the Preliminary Objections is wrong, false and denied. It is vehemently denied that the Defendant No.1 was served the summons of this case on 25.11.2020. That upon perusal of the Court file it has been found that a service report dated 25. 11.2020 vis-à-vis service of the Defendant No.1 by one Mr. A. Kumar presumably Ahlmad is on record. That according to the service report dated 25.11.2020 Mr. A. Kumar had sent a photo of the summons by way of e-mail and WhatsApp to Defendant No.1. However, it is not mentioned in the report that from which e-mail id & Mobile Number and at what time such e-mail & WhatsApp was sent. It is also not mentioned in the service report that the e-mail has not bounced back and there is no mention of any screenshot of WhatsApp message showing blue tick to show that the message was delivered to the Defendant No.1. On the other hand, as per the service report of the Defendant No.2, they were served on 21.11.2020 around 03:23 p.m. by email from the official Court id: nazaratshahdara-ddc@gov.in from the nazarat branch. That in case of Defendant No.1 no service was done through Court's official id: nazaratshahdara-ddc@gov.in by the Nazarat Branch. That it is a matter of fact that many e-mails from unknown sources go to SPAM or TRASH folders thus it cannot be safely concluded that summons were properly sent by e-mail without adequate proof of it being sent and not bounced back with screenshot.

That the Ld. Predecessor Court ordered the Defendants to be served vide Order dtd.18.11.2020 by e-mail, fax, telegram, signal and WhatsApp number however did not lay down the procedure for it. That the Ld. Predecessor Court neither verified from Mr. A. Kumar on oath regarding the e-mail id & mobile no. from where the summons were apparently sent to the Defendant No. 1 by email & WhatsApp and at what time and whether the said e-mail has bounced back or not and whether the WhatsApp message shows any blue tick or not to ensure proper service as per High Court rules nor directed Mr. A. Kumar to file an Affidavit of Compliance. Furthermore, the Court did not give any direction to the Plaintiff to serve the Defendants. That on 16.12.2020, the Ld. Predecessor court only noted that the Defendants were served by way of WhatsApp and e-mail without checking or verifying whether the Defendants were properly served or not and on their non-appearance on the next date i.e.10.02.2021 presumed on their not interested in non-appearance that the Defendants were defending themselves and immediately proceeded ex-parte without ensuring service to the Defendants by all modes i.e. speed post, courier, Newspaper citation, Affixation,etc. That the Ld. Predecessor Court acted in a routine manner and dispensed with the process of service without giving any cogent reason.



Even otherwise, as per the service report of Mr. A. Kumar dtd.25.11.2020 only photo of summons was sent to the Defendant No.1 and the Defendant No.1 was not served with the copy of the Plaint and documents. Thus, service without the Plaint & documents cannot be deemed to be a proper service.

It is also relevant to point out that the Plaintiff has obtained the ex-parte judgment dtd.10.02.2021 concealing the material facts that as per the Tripartite Agreement dtd.14.02.2015, the Bank (the Plaintiff herein) ought to pay the amount in instalments to the Developer (Defendant No.2) and said flat/apartment shall be kept as a security for the housing loan granted by the bank (clause No. 2 & 3 (page No.112) and the said flat/apartment be kept in mortgage to the Bank (clause No.2, page No. 113) of the Tripartite Agreement).That thus the Plaintiff has no right to recover the money from the Defendant No.I who has neither received any possession of flat/apartment from the Defendant No.2 nor any money was paid to him. The adjudication in this matter was not done on merits but in a cursory manner without application of judicial mind. It is violative of the principles of natural justice if the Defendant No.1 is not allowed to defend himself and it will result in a miscarriage of justice as every person ought to be given an opportunity to defend himself and no order / judgment should be passed in the back of parties. Thus, this present Application under Order 9 Rule 13 CPC to set aside the ex-parte judgment dtd.15.04.2023 is liable to be allowed.”

5. As is manifest from the above, even while filing that response, there was an abject failure to traverse the assertions which were made by the process server. The averments taken in the rejoinder affidavit only sought to question the report of the process server and the e-mail address from which the summons had been issued. In the absence of a positive denial of service, we find no justification to interfere with the order impugned.

6. The appeal, consequently, fails and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J

MARCH 04, 2025/akc