



2026:DHC:1834



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

% Date of Decision: 17.02.2026

+ **FAO 203/2024, CM APPL. 36823/2024**

M/S SHREE JEE SALES CORPORATIONAppellant

Through: Mr. Deepak Kohli, Advocate.

Versus

M/S NEXGEN FLUROPOLYMERS PVT LTDRespondent

Through: Mr. Shiv Charan Garg, Mr. Imran Khan, Ms. Jahanvi Garg, and Mr. Divyansh Rawal, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal under Order XLIII Rule 1 CPC challenges the order dated 08.05.2024 passed by the learned District Judge (Commercial Court)-02, North-West, *Rohini* Courts, in Misc. DJ No. 354/2024 in CS (Comm.) No. 205/2021, whereby the application filed by the appellant/defendant under Order IX Rule 13 read with Section 151 CPC, seeking setting aside of the *ex parte* judgment and decree dated 06.07.2023, was dismissed.
2. The respondent/plaintiff instituted the underlying suit for recovery of Rs.15,55,328/- along with interest, alleging that it had supplied goods to the appellant/defendant and that, despite issuance of invoices/e-way bills, the appellant had failed to discharge the outstanding liability. The suit was listed



before the Trial Court at the first instance on 19.03.2021, when summons were directed to be issued.

3. It is the appellant's case that summons were never received by it and that no valid service was effected, either through speed post or electronic modes. In support, learned counsel for the appellant has relied upon the speed post tracking report filed by the respondent with its affidavit of service, which reflects that delivery was not effected at the appellant's address in *Faridabad*.

4. *Per contra*, learned counsel for the respondent submits that process was duly issued and that the affidavit of service filed by it clearly evidences service upon the appellant through speed post, duly supported by the postal receipt and the tracking report generated by the postal authority. He further submits that the appellant was also served through WhatsApp and email by the Registry of the Court and, despite knowledge of the pendency of the suit, the appellant intentionally failed to appear.

5. A perusal of the impugned order shows that summons in the underlying suit were directed to be issued on 19.03.2021. On the next date, i.e., 10.08.2021, the respondent was permitted to serve the appellant through e-mail and registered A.D. post. The Trial Court noted that the respondent had claimed to have served the appellant through e-summons on its email ID ([shreejee.l527\(a\)rediffmail.com](mailto:shreejee.l527(a)rediffmail.com)) and also that it had filed an affidavit of service on 23.08.2021, accompanied by a tracking report, which indicated that the appellant had also been served through speed post on 13.09.2021.

6. Upon being satisfied that the appellant had failed to appear despite service, the Trial Court proceeded *ex parte* against the appellant *vide* order dated 06.01.2022. Thereafter, the respondent led *ex parte* evidence, and an *ex parte* decree eventually came to be passed on 06.07.2023.



7. The appellant claims to have become aware of the aforesaid decree only upon being served in the execution proceedings on 15.03.2024. Consequently, the appellant filed an application under Order IX Rule 13 CPC on 05.04.2024, along with an application under Section 5 of the Limitation Act, 1963, disputing the alleged service through speed post as well as e-summons via WhatsApp and email. The said application came to be dismissed by the impugned order.

8. The primary issue arising for consideration in the present appeal is whether or not the appellant was duly served in the underlying suit.

9. The version put forth by the respondent is that summons to the appellant were dispatched via speed post on 11.09.2021 and delivered on 13.09.2021. In support of this contention, an affidavit of service was filed, accompanied by a postal receipt and a tracking report. However, a perusal of these documents paints a different picture altogether.

10. Firstly, the postal receipt (bearing consignment no. ED002368393IN) was issued on 31.08.2021 and not on 11.09.2021 as claimed. Further, while the said receipt shows that the speed post was booked at *Rohini Courts* and reflects the delivery location as *Faridabad*, the corresponding tracking report (also bearing consignment no. ED002368393IN) reflects that the speed post was booked at *Kashmere Gate* and ultimately delivered to *New Delhi GPO*.

11. It is worthwhile to mention at this stage that the respondent itself had cited the appellant's *Faridabad* address in its plaint, which makes it even more difficult to reconcile how the tracking report showing delivery to *New Delhi GPO* can be construed as valid service of summons at the appellant's correct address.

12. No clarification in this regard appears to have been sought from the



postal authority, nor has any other material been placed on record to explain why the tracking report shows that the summons were delivered to *New Delhi GPO* and not to the appellant's given address in *Faridabad*.

13. As regards service through electronic modes, the Trial Court appears to have proceeded on the basis of the respondent's claim that service had been effected on the appellant's email ID, noting simply that the appellant had not disputed that the said ID belonged to it. Relying upon the decision of the Supreme Court in *Electricity Regulatory Commission Vs. National Hydroelectric Power Corporation Limited*¹ to hold that service through email constitutes valid service in law, the Trial Court held the appellant to have been duly served through e-summons.

14. While there can be no dispute with the proposition laid down in *Electricity Regulatory Commission* (*supra*) that service of notice(s) may be effected by email in commercial litigation, the validity of the mode of service does not dispense with the requirement of proof of actual service.

15. A perusal of the case file reveals that there is no material on record to demonstrate that the email was successfully delivered to and received by the appellant. In fact, it is not at all discernible from the record whether the purported service via email and WhatsApp was initiated by the Court Registry or by the respondent; regardless, there is no evidence to show that the email did not bounce back. The record merely contains a handwritten statement asserting that a photocopy of the summons was sent on 17.09.2021 and that "double ticks" appeared on WhatsApp. A mere statement that double ticks were seen, in the absence of any delivery report, acknowledgment, server confirmation, or other material indicating receipt

¹ (2010) 10 SCC 280



having been placed on record, could not have been the basis of the impugned order.

16. For reasons noted above, this Court is of the considered opinion that the material on record does not conclusively establish that summons were duly served upon the appellant either through speed post at the correct address in *Faridabad* or through electronic modes.

17. It is settled law that an *ex parte* decree must be set aside if the defendant satisfies the Court that summons were not duly served or that sufficient cause prevented appearance. A gainful reference in this regard may be made to the decision of the Supreme Court in *Sushil Kumar Sabharwal Vs. Gurpreet Singh & Ors.*²

18. Considering all the above, this Court is of the view that the Trial Court, while dismissing the subject application, did not undertake a thorough examination as to whether service had in fact been effected upon the appellant in a satisfactory manner. In these circumstances, the appellant cannot be said to have been duly served in the underlying suit, and the *ex parte* proceedings culminating in the judgment and decree dated 06.07.2023 cannot be sustained.

19. Accordingly, the present appeal is allowed. The *ex parte* order dated 06.01.2022 and the judgment and decree dated 06.07.2023 passed in the underlying suit are hereby set aside.

20. Consequently, the suit shall stand restored to its original position prior to the order dated 06.01.2022. The parties shall appear before the concerned Trial Court on 16.03.2026.

21. The present appeal, along with the pending application, is disposed of

² (2002) 5 SCC 377



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in the above terms.

22. A copy of this judgment be communicated to the concerned Trial Court.

**MANOJ KUMAR OHRI
(JUDGE)**

FEBRUARY 17, 2026/nb

Signature Not Verified

Digitally Signed
By:NIJAMUDDIN ANSARI
Signing Date:26/02.2026
11:51:04

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