

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of reserve : 16.01.2007.

Date of decision: 23.01.2007.

FAO No.20/2007

Reena Sadh

..... Appellant

Versus

Anjana Enterprises
Through its Partner
Ghanshyam Das Kukreja

.....Respondent

Advocates who appeared in this case :

For the appellant : Mr. Chetan Sharma, Sr. Advocate with
Mr. Pradeep Sharma, Advocate.

For the respondent : Mr. L.D. Adlakhia, Advocate.

J.M. MALIK, J.

1. In these proceedings the appellant has picked up a conflict with the ex-parte judgment, which according to her was passed without service to her. Vide his order dated 23.12.2006, the learned Additional District Judge dismissed the application moved under Order 9 Rule 13 C.P.C. In support of her case, she has enumerated the following grounds. Firstly, the decree holder had instituted a suit for recovery which was decreed with costs by the Court of learned Additional District Judge against the judgment debtors wherein the judgment debtors were directed to pay a sum of Rs.14,50,000/- together with interest @ 24% per annum, both pendente lite and future, till the realization of the amount. It is averred that the suit of recovery was filed against firm M/s Renuka Inc., Judgment Debtor No.4. So far as the appellant is concerned, she is neither a Director nor Partner nor she is holding any interest in the firm. Despite this, she was impleaded as a party in the suit. It is explained that she was only an employee of the defendant's firm. Even if it is

assumed that any amount was due and payable to the decree holder/plaintiff, then it was the liability of M/s Renuka Incorporation or its Partners to pay the amount and not that of the appellant.

2. The key ground set up by the appellant/defendant No.3 was that she was not properly served in this case. The gist of the ordersheets concerning the appellant is as follows. The ordersheet dated 30.08.2001 goes to show that the appellant/defendant No.3 was served for the said date. On 21.02.2002, it was recorded that defendant No.3 was absent despite service. Learned counsel for the defendants No.1, 2 and 4 Mr. K.K. Sharma submitted that he intended to seek instructions from defendant No.3 for representing her. The case was adjourned to 22.07.2002. On 22.07.2002, time was sought by the defendants to file written statement whereas written statement of defendants No.1, 2 and 4 was already filed. The case was adjourned to 12.02.2003. The case was taken up on 13.02.2003. Learned counsel for the defendants No.1, 2 and 4 again stated that he would seek instructions from defendant No.3 as well. It was ordered that written statement be filed by defendant No.3 within a period of two weeks. The case was adjourned to 08.08.2003. On 08.08.2003, Shri N.P. Kaushik, Learned Joint Registrar of this Court passed the following order :-

“This is a case where the value of the suit for the purpose of pecuniary jurisdiction is less than Rs.20 lacs. In view of the orders passed by the Hon'ble Chief Justice the present matter is transferred to the court of Hon'ble District Judge, Tis Hazari Courts, Delhi for assignment to a court of competent jurisdiction. Parties and/or their counsel to appear before the Hon'ble District Judge, Delhi on 25th September, 2003.”

It was pointed out that previously the case was instituted before this Court. Subsequently, it was transferred to the District Court as the pecuniary jurisdiction of the District Court was enhanced. The Court of learned Additional District Judge received this case on 25.09.2003. None of the parties except Ghanshyam Das, Partner of M/s Anjana Enterprises was present and the Court ordered that Court notices be issued to defendants and their counsel. On 22.10.2003, defendants could not be served. Court notice was again ordered to be issued for 01.12.2003. On 01.12.2003, defendants were not served. Again, it was ordered that Court notice be issued to the learned counsel for the defendants for 07.01.2004. On 07.01.2004, the case was adjourned for fresh Court notice to the defendants for 09.04.2004. On 12.02.2004 Mr. Avinash Lakhan Pal, Proxy Counsel for Mr. K.K. Sharma, Advocate appeared and the case was adjourned to 08.04.2004 for filing the reply. On 08.04.2004, defendants appeared through Mr. Avinash Lakhan Pal, Proxy Counsel for Mr.K.K. Sharma. Last opportunity was granted to file the reply subject to payment of costs in the sum of Rs.5,000/-. The case was adjourned to 26.04.2004.

On 26.04.2004, the Court was on leave and the case was adjourned to 03.05.2004. 03.05.2004 was declared as a Holiday and the case was taken up on 04.05.2004. On 04.05.2004, none appeared on behalf of the defendants, therefore, the case was adjourned to 20.05.2004. On 20.05.2004, the Presiding Officer was on leave and the case was fixed for 06.07.2004. On 06.07.2004, Proxy Counsel appeared for defendants. The case was adjourned for reply to 17.08.2004. On 17.08.2004, none appeared on behalf of the defendants. The case was proceeded against them ex-parte. Vide order dated 17.08.2004, the case was fixed for ex-parte evidence on 29.09.2004. The Court hearings were fixed for 29.11.2004, 14.12.2004, 01.02.2005, 04.03.2005, 04.04.2005, 09.05.2005, 03.06.2005, 11.07.2005, 17.08.2005, 20.09.2005, 01.10.2005, 06.10.2005 and 20.10.2005. The ex-parte decree was passed on 27.10.2005. On none of the above mentioned hearings, anybody appeared on behalf of the defendants.

3. Learned counsel for the appellant pointed out that the trial court proceeded with the suit on the assumption that the learned counsel, who was appearing for the other defendants is also representing the appellant Reena Sadh. No vakalatnama on behalf of appellant/defendant was filed. No memo of appearance was filed on her behalf.

4. Learned counsel for the appellant pointed out that interpretation given by the learned Additional District Judge regarding the word "Parties" occurring in Rule 6 of Chapter 13, Delhi High Court Rules is not correct. Learned Additional District Judge held :-

"The word "parties" used in rule 6 of Chapter 13 Delhi High Court Rules substantially means and indicates the parties which are contesting the suit. Only they are supposed to be informed and not those parties who have no interest in the matter. The conduct of the JD No.3 reflects that she had no interest in the matter. According to her own version she had neither appeared herself nor had authorized anyone to appear on her behalf. Thus, the position substantially remains the same. The defendant is to be treated as ex-parte and in case the erstwhile counsel of defendants No.1, 2 and 4 were looking after her interest as well then they were informed about the transfer of the case. The same counsel Shri K.K. Sharma, Advocate through his colleagues put in appearance even before this Court after the transfer of the case and never even clarified that he does not represent JD No.3. Therefore, in these circumstances grounds on which setting of decree has been sought do not support and substantiate the cause of the JD No.3. The judgments relied upon by the Counsel for JD No.3 in Akttaryar Khan's case and Sushil Kumar Sabharwal's case have evidently no bearing on the facts of this case."

Rule 6 Chapter 13 of Delhi High Court Rules runs as follows :-

“6. Records to be sent immediately to the court to which case is transferred--When is a case is transferred by administrative order from one Court to another, the Presiding Officer to the Court from which it has been transferred, shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the Court to which the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the Court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the Court passing the order should fix a date on which the parties should attend the Court to which the case is transferred.”

Learned counsel for the appellant argued that the notice of transfer should have been sent to the appellant. It is submitted that the appellant was never contacted by or any of the counsel appearing on behalf of the other defendants and the counsel never sought instructions from the appellant. The findings given by the learned Trial Court that the other defendants have to clarify that their counsel was not representing the appellant, is not correct. It was prayed that under these circumstances, the order passed by the learned Additional District Judge should be set aside.

5. All these arguments have left no impression upon the Court. This must be borne in mind that this Court is dealing with an application under Order 9 Rule 13 C.P.C. This Court cannot decide the case on merits. However, plaint shows that defendant No.3 was an instrument in reaching the abovesaid transactions. Plaint reads that defendant No.3 had interest in this case. It was alleged that she had been used by defendants No.1 and 2, who are the sister-in-law and brother of defendant No.3 in cheating the suppliers. She is also in conspiracy with the defendants No.1 and 2 in cheating the plaintiff/deed holder and other suppliers. The present judgment debtor, the appellant is already on bail in a criminal case. It is alleged that Reena Sadh used to sit in the aforesaid office of the defendants No.1 and 2. However, I refrain myself in discussing the evidence in this regard. If the appellant is having any grouse, she should file an appeal against the impugned judgment.

6. Order 9 Rule 11 C.P.C. is of infinite importance. It puts the case of the respondent and the decision taken by the first Appellate Court in an impregnable position. The same is reproduced as hereunder :-

“R.11 Procedure in case of non-attendance of one or more of served defendants.- Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.”

This is an indisputable fact that the appellant was served in this case. The record reveals that notice was given to the defendant No.3 Reena Sadh, wife of Mr. Robin Sadh. The said notice was received by her husband under his signatures on 06.10.2001.

7. Under these circumstances, it was not incumbent upon the Court to mention that she was being proceeded against ex-parte or her defence was struck off. It is also clear that Reena Sadh was adopting policy of hide and seek. She was taking the Court for a ride. Her Advocate stated that she was getting instructions for filing the written statement on atleast 2-3 occasions. On 08.08.2003, Joint Registrar Shri N.P. Kaushik recorded the presence of the following persons:- “Mr. L.D. Adlakha and Mr.Ajay Amitabh Suman for the defendants.” Mr.Ajay Amitabh did not state that he was not appearing for defendant No.3. It was the duty of the Advocate to apprise the Court of the fact that he was not appearing for defendant No.3, particularly when he represented before the Court on three occasions that he was seeking instructions for filing written statement on behalf of the appellant.

8. The ordersheet dated 08.08.2003 clearly goes to show that Rule 6 Chapter 13 of Delhi High Court Rules was complied with. The fact that the learned District Judge took some extra precautions to serve the defendants, does not go to belittle the value and significance of order passed by Shri N.P. Kaushik, Joint Registrar.

9. The gamut of whole facts and circumstances lean on side of decree holder. The Court below has meticulously checked the record with precision and clarity. The appeal is without merits and is, therefore, dismissed. Stay, if already granted stands vacated. No orders as to costs. Trial Court record and copy of this judgment be sent to the Trial Court forthwith. File be consigned to the Record Room.

Sd/-
J.M. MALIK, J.