

(1978) 02 MP CK 0013

In the Madhya Pradesh High Court

Case No : Civil Revision No. 93 of 1976

Abdul Hussain H.M. Hasanbhai

APPELLANT

Vs

The Shalimar Rope Works Ltd. and Another

RESPONDENT

Date of Decision : 28-02-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 2

Citation : AIR 1978 MP 157 : (1980) ILR (MP) 72 : (1978) MPLJ 43

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : R.K. Vijaivargiya, for the Appellant; Shekhar Bhargava, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Shalimar Rope Works Ltd. Vs. Abdul Hussain H.M. Hasanbhai Rassiwalla and Others, AIR 1980 SC 1163 : (1980) 3 SCC 595 : (1980) 3 SCR 1028 : (1980) 12 UJ 606

G.L. Oza, J.

This revision petition has been filed by the plaintiff-petitioner against an order passed by the Additional District Judge, Indore on 20-10-1975 in Misc. Judl. Case No. 23/75; wherein the learned Judge allowed an application submitted by the non-applicants and set aside an ex parte decree.

The plaintiff-petitioner filed a suit against the non-applicants for recovery of an amount of Rs. 26,000/-. A summons of this suit was served on the defendant non-applicants on 17-3-1975; but still on 25-3-75 nobody appeared for the non-applicants. Thereupon on 22-4-75 an ex parte decree was passed. Thereafter on 5-8-75 an application under Order 9, Rule 13 of the C. P. C. for setting aside ex parte decree was filed in the court below by the non-applicants alleging that the summons in the suit was not properly served on defendant No. 1. They also contended that they learnt about passing of the decree on 29-7-75, therefore

they sought setting aside of the decree passed against them. It is not in dispute that the summons in the name of the defendant-non-applicant No. 1 was served on an employee in the registered office of the Company on 17-3-1975 and this employee of the Company put his signatures on the summons affixing seal of the Company indicating that "he received the summons on behalf of the Company. What was contended in the Court below as well as before me was that this person who received the summons on behalf of the Company was not an Officer authorised to receive the summons as contemplated under Sub-clause (a) of Rule 2 of Order 29 of C. P. C. The court below also set aside the ex parte decree on the ground that the summons was not served on the proper person.

It was contended by learned counsel for the petitioner that it is strange to note that the Officer who received the summons and signed on behalf of the Company has not been produced in the witness box. Apart from it learned counsel contended that Order 29 Rule 2 (b) C. P. C. provides that the summons could be served on a Company either by post or by leaving it in the registered office of the company and according to learned counsel the signatures of an officer of the Company in the registered office having received the summons clearly go to show that the summons was left in the registered office of the company and this is sufficient compliance with Sub-clause (b) of Rule 2 of Order 29 C.P.C. According to learned counsel the Court below failed to consider Sub-clause (b) on an assumption that Sub-clause (b) is only applicable in cases of service by registered post. But this is clearly a misconception. Consequently learned counsel contended that the court below has committed material irregularity in exercise of jurisdiction.

Learned counsel for the non-applicants on the other hand contended that when a notice is sought to be served personally it could only be served in accordance with Sub-clause (a). He also submitted that under the Law of Companies it is always a person authorised or a Director or a Secretary who is entitled to receive the summons on behalf of the Company. He, however, did not dispute that the notice was received by an employee of the Company in the registered office and that person has not been examined; but he contended that he had no authority to receive the summons on behalf of the Company and therefore for his fault the Company could not be penalised.

It is not in dispute that the person who received the summons in the office of the Company is not a person who is entitled to be served on behalf of the Company in accordance with Sub-clause (a) of Rule 2 of Order 29 of C. P. C. It is also not in dispute that the notice was served on an employee of the Company who was at that time in the registered Office of the Company and he received the notice in the name of the non-applicant Company in the registered office and put his signatures in acknowledgment thereof and also put a seal to indicate that he was receiving it in the registered office of the Company. It, therefore, could not be disputed on fact that the summons was left in the registered office of the Company. As regards the negligence or default made by this employee of the

Company is concerned, there is nothing in evidence as this person has not been examined at all. There is also nothing to indicate that he was not authorised to receive papers in the registered office of the Company and he without any authority put the seal of the Company on the summons and signed it. As regards his authority an Officer of the Company has been examined; but the person who received the summons has not been examined and the Officer who was examined has mainly stated that he was not a person as contemplated under Sub-clause (a) of Rule 2 of Order 29 of the C. P. C, to receive the summons on behalf of the Company. It is also not in dispute before me that the person who signed the receipt of the summons is neither a Director nor the principal Officer or the Secretary of the Company.

Order 29 Rule 2 of C. P. C. provides :

"2, Service on Corporation. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-

(a) on the secretary or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business"

It is not in dispute that the summons on the Corporation or the Company has not been served in accordance with Sub-clause (a) of Rule 2 of Order 29 C. P. C. Sub-clause (b), it appears, was omitted from consideration by the court below on an assumption that it only applies to service by post. But it could not be disputed and in fact it was not disputed that Sub-clause (b) contemplates two modes of service -- one by leaving the summons at the registered office or by sending it by post addressed to the corporation at the registered office and in absence of registered office it could even be left or sent where the corporation carries on business. In the present case we are not concerned with any other place where the corporation carries on business because admittedly the summons was handed over to an employee in the registered office of the Company. It, therefore, could not be doubted that the summons was left in the registered office of the company as contemplated by Sub-clause (b) of Rule 2 of Order 29 of C. P. C. and this rule provides this as a mode of service and therefore, that mode was followed and the service has been completed. In *Bhagwati Dhar Bajpai Vs. Jabalpur University and Others*, a Division Bench of this Court considered the impact of the words "or left at his office" and observed -- (at p. 242)

"In the same connection, the language of Section 80 of the Civil P. C. was emphasized before us on behalf of the respondents where, in case of notices which are required to be delivered to particular public officers stated in that section, the language used is that the notice shall be delivered to him or left at his office. By contrast of the language it was sought to be urged that the words "or left at his office" are missing in Section 18(1), the only meaning that could be

given to the language used was that the notice should have been handed over personally to the Registrar, In our opinion, the words "or left at his office" as used in Section 80 C. P. C. have merely been used by way of abundant caution and even if those words were not there, it could not be insisted that the notice should have been delivered to the public officer concerned personally."

Learned counsel for the non-applicants placed reliance on a decision reported in *Commr. of Income Tax v. Dey Brothers* (AIR 1935 Rang 144) wherein it was observed that where a notice under the Income Tax Act is delivered otherwise than by post to any clerk or servant on the premises where the assessee carries on business, it is not sufficient to hold that the notice was served on the Manager. In this decision their Lordships were considering the service on a person under Order 5 Rules 9 and 13 of C. P. C. as u/s 63 (1) of the Indian Income Tax Act, 1922, the summonses were to be issued and served in accordance with the provisions contained in the Civil P. C. and in that context their Lordships felt that the summons being served on any employee in the office will not amount to personal service of the assessee; but in that decision the provisions contained in Order 29 Rule 2 were not considered apparently because it was not a case of a corporation and therefore this case is of no assistance. Learned counsel referred to certain observations in the Halsbury's Laws of England and also to the provisions contained in Section 51 of the Companies Act. But all that is not necessary for the decision of this case. It, therefore, could not be doubted that the notice on the non-applicant No. 1 Company was served in accordance with Sub-clause (b) of Rule 2 of Order 29 of the C. P. C.

The trial Court omitted to consider this rule on an assumption that it would only apply to the cases of service by post. Apparently that is not justified, and therefore, the court below committed material irregularity in exercise of jurisdiction in setting aside ex parte decree on the ground that the notice of the suit was not properly served.

It was not contended by learned counsel for the non-applicants that even if notice was held to be served there was sufficient reason for the non-applicants to explain the absence from appearance on the date fixed. It appears that that was not the case of the non-applicants. In any event that has not been contended before me, apparently as it would not be possible for the non-applicants to explain the delay as notice was served in the month of March whereas the application for setting aside the ex parte decree was made in the month of August.

In the light of the discussion above, this revision petition is allowed. The order passed by the learned Additional District Judge, Indore dated 20-10-1975 is set aside. The petitioner shall be entitled to costs of this revision. Counsel fee Rs. 150/-, if certified.