

(2016) 02 DEL CK 0075
In the Delhi High Court
Case No : FAO(OS) 63 of 2016

Comba Telecom Ltd.

APPELLANT

Vs

S. Tel Private Ltd.

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2 (3)

Citation : (2016) 164 AIC 608 : (2016) 228 DLT 713

Hon'ble Judges : Badar Durrez Ahmed;Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Shiv Charan Garg, R.K. Kashyap and Imran Khan, Advocates, for the Appellant

Final Decision : Allowed

Judgement

CM No.7414/2016 (exemption)

Exemption is allowed subject to all just exceptions.

FAO(OS) 63/2016

1. This appeal has been preferred by the appellant/plaintiff against the order dated 13.01.2016, passed by a learned Single Judge of this Court. By virtue to the impugned order, although the defendant had not appeared in the proceedings despite service of summons, the learned Single Judge has directed the plaintiff/appellant to file its evidence by way of affidavit within three weeks and the matter has been directed to be listed before the Joint Registrar for exhibiting the documents on 31.03.2016 and thereafter for listing before Court for arguments on 11.07.2016.

2. The appellant/plaintiff had filed the suit [CS(OS) 3491/2014] under the summary procedure of Order 37 of the Code of Civil Procedure, 1908. The learned counsel drew our attention to the order dated 15.12.2014, passed by the Joint Registrar (Judicial) whereby the issuance of summons for appearance of the

defendant/respondent was directed. It was clearly indicated that the form of summons would be Form No. 4 in Appendix B. On the next date, i.e. on 23.04.2015, the Joint Registrar (Judicial) clearly notes that the defendant had been served with summons for appearance on the second address on 04.03.2015. It also notes that the defendant had not entered appearance within the stipulated period of 10 days. Consequently, the Joint Registrar (Judicial) directed that the matter be placed before the Court for further directions on 06.08.2015. Ultimately, the matter was taken up on 13.01.2016 by the learned Single Judge when the impugned order was passed.

3. The learned counsel for the appellant submitted that in view of the provisions of Order 37 Rule 2(3), it has been clearly provided that the defendant shall not defend the suit unless he enters appearance. Furthermore, in default of the defendant entering appearance, the allegations in the plaint are to be deemed to be admitted and the plaintiff would be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the Court from time to time by rules made in that behalf and such decree may be executed forthwith.

4. Clearly, the suit was filed under the summary procedure under Order 37 CPC. Summons were also issued in the appropriate form as provided in Order 37 Rule 2(2), which is Form No. 4 in Appendix B. The summons were duly served. The defendant had not entered appearance. In other words, the defendant could not have defended the suit and all the allegations made in the plaint were to be deemed to have been admitted. The consequence of this was that the plaintiff would be entitled to a decree, as indicated in Order 37 Rule 2(3) CPC.

5. In view of the clear language employed in Order 37 Rule 2(3), we agree with the submissions made by the learned counsel for the appellant that the learned Single Judge could not have set up the matter for evidence inasmuch as the averments made in the plaint were to be deemed to have been admitted.

6. Consequently, we set aside the impugned order dated 13.01.2016 and direct that the suit be placed before the learned Single Judge on 17.03.2016. The learned Single Judge shall pass appropriate orders in accordance with law.

7. The appeal stands allowed.