
(2002) 01 DEL CK 0136
In the Delhi High Court
Case No : C.R. No. 615 of 2000

Hindustan Carrier Corporation and Another	APPELLANT
Vs	
Vijay Prasad	RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Citation : (2002) 96 DLT 677 : (2002) 61 DRJ 836

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : O.P. Saxena, for the Appellant; S.K.Wason, for the Respondent

Final Decision : Allowed

Judgement

R. C. Jain, J.

Heard the learned counsel for the parties.

1. This revision petition is directed against the order of the learned Additional District Judge dated 24.5.2000 thereby dismissing an application under order xxxvII Rule 4 CPC made by the petitioner/defendant seeking for the setting aside of the judgment and decree dated 16.2.2000 passed in favor of the respondent/plaintiff in a suit filed by him under order xxxvII CPC.

2. The application was made with the averments that after the service of summons for appearance, the petitioner/defendant had put in appearance and furnished two addresses one being CW 619 Sanjay Gandhi Transport Nagar, Delhi-42 and the other being of D-10, Ganga Vihar, Delhi-94 for the purpose of service of summons for judgment, in case such summons were issued by the court. Later the respondent/plaintiff applied for summons for judgment and the same were issued to the petitioner/defendant on his first address of Sanjay Gandhi Transport Nagar. The process server reported that the premises at the aforesaid address were locked and the petitioner was not found to be functioning from the said premises. The Process Server took the summons again and

effected service by affixation, without there being any order of the court for affixation. The petitioner stated that he has not been served with the summons for judgment and consequently he could not make any application for leave to defend and the decree passed by the learned trial court was liable to be set aside. The application was opposed by the respondent/defendant mainly on the ground that the petitioner had full knowledge of the proceedings which were being taken in the trial court and he remained present outside the court on 4.2.2000 and also on 16.2.2000 and he has intentionally avoided to file any leave to defend application and put appearance before the court mainly with a view to delay proceedings and allowed the decree to be passed, which was not liable to be set aside.

3. Learned trial court has dismissed the application primarily holding that the petitioner/defendant had full knowledge of the proceedings and he must have been present outside the court on 4.2.2000 and 16.2.2000 when the proceedings were taken and the decree was passed. The learned trial court has referred to certain dates appearing on the applications for inspection and for setting aside the ex-parte decree and on the strength of the same, it has been concluded that the petitioner/defendant was in fact interested in delaying the proceedings. The learned trial court has thus dismissed the application.

4. Having considered the matter in its entirety, this court is of the opinion that on the face of facts and circumstances and material obtaining on record, the learned trial court was not justified in dismissing the application. The application ought to have been allowed more particularly when it was pointed out to the court that the petitioner/defendant had furnished two addresses and the summons for judgment were issued only on one address which was found locked. In such a situation it was necessary that summons for judgment ought to have been issued to the petitioner/defendant on the second address before the court proceeded with the matter and passed a decree holding that the defendant was served and had not filed any application for leave to defend within the prescribed period. The contention of the learned counsel for the respondent that the petitioner/defendant wanted to delay the proceedings and he allowed the decree to be passed deliberately does not seem to be convincing as a few days delay could not have been of any great advantage to the petitioner/defendant. It is also pointed out that the petitioner/defendant had been frequently changing his address and it may be difficult for the plaintiff/respondent to serve him again with the summons for judgment if the present petition is allowed and fresh summons are issued to him. I, however, see no merit in its contention because the petitioner is present in the court and can be called upon to furnish his latest address.

5. In the result this court is of the opinion that the present petition deserves to be allowed and the impugned order is liable to be set aside. The impugned order is accordingly set aside subject to the payment of Rs.5,000/- as cost. The application under order xxxvII rule 4 CPC is hereby allowed and the judgment

and decree of the learned trial court dated 24.5.2000 is hereby set aside. Learned counsel for the petitioner states that the summons for judgment may be served upon the defendant on the second address e.g. D-10, Ganga Vihar, Delhi-94. The respondent/plaintiff may appear in the trial court on 18th January, 2002.