

(1994) 08 DEL CK 0018

In the Delhi High Court

Case No : Interim Application No's. 15022 and 15023 of 1991 and Suit No. 1528 of 1990

Hindustan Ciba-Geigy Ltd.

APPELLANT

Vs

Bondwell India Pvt. Ltd.

RESPONDENT

Date of Decision : 18-08-1994

Acts Referred:

Citation : (1994) 3 AD 1517 : (1994) 30 DRJ 589

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : Sandeep Narain and Ravi Kher, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This order shall dispose of I.A. NO. 15022/91 and 15023/91 filed respectively under rule 4 and rule 3(5) of Order 37 of the Civ

(2) A brief resume of the relevant facts. The plaintiff tiled this suit with the allegations that it had supplied goods worth Rs. 22,11,261.00 to the defendants. An amount of Rs. 19,33,851.00 was paid by the defendant to the plaintiff. The balance amount of Rs. 2,77,410.00 remained outstanding. The defendant had issued three cheques worth Rs. 2,08,820.00 to the plaintiff in part payment of the outstanding balance. The cheques were dishonoured on being presented to the bank for payment. The plaintiff filed a suit for recovery of Rs. 2,77,410.00 with interest calculated at the rate of 23% p.a. making a total of Rs. 5,47,181.00 . It was a summary suit under order 37 CPC. The defendants having been noticed made appearance and filed their address for service. Summons for judgment was issued to the defendant on the address given by them. It was the address of the counsel. The summons were returned by the process server with the report that the counsel available in his chamber had asked the process server to secure the service of the summons directly on the party. The process server did not leave a copy of the summons at the given address. Service was,

Therefore, not accepted as valid and summons were directed to re-issue. This time the process server reported that the service was refused by the counsel available at the given address in his chambers. The matter was taken up for hearing on 29.11.91. A junior counsel from the chambers of the counsel appearing for the defendants was present in court. As there was no application filed for leave to defend this Court forming an opinion that the plaintiff was entitled to judgment forthwith, directed a decree to be passed for a sum of Rs. 2,77,410.00 with interest calculated at the rate of 12 % p.a. from the due date till realisation covering the pre-suit petition and the period covered by the pendency of the suit.

(3) I.A. 15022/91 under Order 37 Rule 4 read with Section 151 CPC seeking setting aside of the judgment and decree has been filed on 7,12,1991 stating that the counsel had never refused to accept the service and that the report of the process of server was false and so the defendants are entitled to participate at the hearing.

(4) I.A. 15023/91 under Order 37 Rule 3(?) CPC filed on 16.12.91 seeks leave to defend. The only plea which has been specifically raised in the application is that though a sum of Rs. 2,77,410.00 only is outstanding against the defendant, yet a suit for Rs. 5,47,181 .00 has been filed which is highly inflated and not covered by Order 37 CPC.

(5) Both the applications have been vehemently opposed on behalf of the plaintiff.

(6) Order 37 Rule 4 CPC differs from the provisions of Order 9 Rule 13 CPC in as much as it does not contemplate a decree being set aside on availability of sufficient cause"; it is only the availability of "special circumstances" on which the decree of the court may be set aside. To avail the benefit rule 4 the defendant shall have to satisfy the court that not only there was no due service of summons in the suit or that he was prevented by sufficient cause from seeking the leave to defend the suit but he would also have to satisfy the court that he had a substantial defense to be raised in the suit of which he has been deprived of by the judgment and decree.

(7) The record of proceedings of the case does not indicate the ground under Order 37 rule 4 CPC being available to the defendants. It cannot be said that the defendants or their counsel were not aware of the proceedings held by the court on 28.11.1991. The averments made in the plaint, weighed in the light of averments made in the application seeking leave to defend, go to show that there is no specific defense available to the defendant. The substantial grievance of the defendant could have been only against the grant of interest claimed in the suit which has already been scaled down to 12% p.a. from 23% p.a. Substantial justice has been done. This court is not inclined to set aside the decree solely for the purpose of enquiring into the grievance raised on behalf of the defendant as to whether the report of the process server was correct or not.

(8) For foregoing reasons, both the applications are held liable to be rejected.

Accordingly, I.A. Nos. 15023/91 & 15022/91 are rejected.