

(1991) 12 DEL CK 0017

In the Delhi High Court

Case No : Interim Application No. 1167 of 1991 and Suit No. 2766 of 1988

Nairs Arkimetals (P) Ltd.

APPELLANT

Vs

New Delhi Hotels Ltd.

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Citation : (1992) 46 DLT 93 : (1992) 22 DRJ 199

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Naveen Anand and S.K. Mahajan, for the Appellant;

Judgement

Jaspal Singh, J.

(1) Sub Rules 3 and 4 of Rule 3 of Order 37 of the CPC and Form 4-A in Appendix-B have given cause to this order. However, first a bonafide view of the back-drop.

(2) The suit is under Order 37. Consequent upon service of summons in Form 4 in Appendix-B, the defendant entered its appearance and thereupon complied with the requirement of sub-Rule 3 of Rule 3. Then came the turn for the plaintiff to proceed according to sub-Rule 4 and it really did so, inasmuch as summons for judgment in Form 4-A in Appendix-B was served on the defendant. As the summons holds the pivot, I must reproduce it. It says:

Upon reading the affidavit of the plaintiff the court makes the following order, namely: Let all parties concerned attend the court on the 25th day of January, 1991 at O'Clock in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or several insert names) for Rs. 2,72,767.35 P and for interest and costs. Dated the 21st day of November, 1990. Superintendent (0) for REGISTRAR."

(3) As all the gowns do know, under sub-Rule 5, the defendant is required, if he

wants to defend the suit, to apply for leave to defend the suit within ten days of the service of summons in Form 4-A. However, the defendant before me, did not. It applied much later and the reason given is that it was never told about it and rather it took it that appearance only was required to be put and that too on the date mentioned in the summons. In short it lays the entire blame at the doors of the summons.

(4) The summons already stands reproduced. It only calls upon the parties to attend the Court on a particular date fixed for hearing of the application of the plaintiff. It speaks not that if the suit is intended to be defended, the defendant must apply within ten days from the service of summons in Form 4-A. On the contrary by asking the parties to attend the Court on a particular date, the defendant is put off the track. True, every person is supposed to know the law. But let us be practical. How can an unsuspecting, unwary defendant know this procedural technicality which may play havoc with his rights? The summons does not lead. It misleads. Why is it not explicit like its neighbourly Form 4 ? But since it is not so, why not make it equally clear? Sub rule 4 itself invests with such a power. Why not grab it? An explicit summons would do good to all. I hope the High Court, on its administrative side, does something.

(5) Coming back to the case in hand, the defendant, states it was misled by the date of hearing mentioned in the summons served in Form 4-A and that is why the application for leave to defend could not be moved in time. I have no reason, nor the plaintiff has furnished any, to make me disbelieve. If that be so, why slam the doors? Is it not such a case where the Court should stand by the cause? It is nobody's case, nor could it possibly be, that Section 5 of the Limitation Act does not apply. The delay deserves to be condoned. I condone it.

(6) A copy of the order be sent to the Registrar of the Court.

(7) Since it is a suit under Order 37 of the CPC by the plaintiff company for the recovery of Rs-2,72,767.35 on account of the supply and installation of aluminium doors, windows, fixtures and fittings at the defendant's hotel site, the defendant has applied for leave to defend the suit and it is this application which has led to this order.

(8) Although the plaintiff company claims that as per agreement entered into between the parties it had, to the satisfaction of the defendants supplied and installed aluminium doors, windows and Fittings and that the defendants have not made the payment due in spite of repeated demands, it is the case of the defendant that the doors and windows etc. so supplied were neither according to the specifications nor as per the agreement entered into and that in fact the entire material supplied was defective, unsatisfactory and of very poor quality. It is further claimed that the plaintiff neither supplied nor installed any doors and windows frames on the second floor of the hotel of the defendant and as such failed to fulfill its obligations. Besides all this it is also claimed that the bills are highly inflated and that actually the defendant had to suffer loss by getting the

work executed from other parties. In short thus the defendant denies its liability.

(9) The law on the subject is well established. The Courts would and must give leave where the defense raises a triable issue. It cannot be said, in the present case, that no such triable issue has been raised. Nor can it be said that the defense raised is not bona fide or is sham or moonshine. This being the position and the law being as laid down in Santosh Kumar Vs. Bhai Mool Singh, , leave to defend is granted without imposing any condition.