
(2010) 03 DEL CK 0126

In the Delhi High Court

Case No : C.M. (M) No. 256 of 2010

PGA Travel Consultants Inc. and Another

APPELLANT

Vs

Harish Chander Aggarwal

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7
Constitution of India, 1950 — Article 227

Citation : (2010) 03 DEL CK 0126

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Narender Pal Singh and B.L. Anand, for the Appellant;

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 22nd January, 2010 passed by the learned trial Court dismissing an application of the petitioner under Order 9 Rule 7 CPC for setting aside the ex parte order dated 15th October, 2009 so as to give him an opportunity to place WS on record.

2. The respondent filed a suit against the petitioner and summons of suit were sent to the petitioner through ordinary process as well as by registered cover. It is not the case of the petitioner that summons were sent at the wrong address. The summons sent through registered cover were taken by the postman repeatedly at the house of the petitioner on 16th, 17th, 18th, 19th & 22nd September, 2009 and every time postman was sent back saying that the petitioner was not at home. However, when the summons were taken by the process server of the court, the petitioner was present at his house and after reading summons he refused to receive the summons on 1st October, 2010. The process server gave a report to this effect to the Court that the petitioner after reading summons refused to receive the summons. The matter was next listed before the Court on 15th October, 2009. The petitioner did not appear before the

Court on 15th October, 2009. Considering the report of refusal and of deliberate not receiving summons through postman as well the trial Court proceeded ex parte against the petitioner.

3. The petitioner moved an application under Order 9 Rule 7 CPC stating therein that around 20th September, 2009, the petitioner had gone to see his biological father Shri Amarjeet Singh to Yamunanagar as his biological father was 72-73 years old and was a kidney patient and a diabetic. The petitioner came back on 10th November, 2009 when his peon informed that one Officer of the Court had come to serve the summons of the case pending in the Court of Patiala House. He then engaged a Counsel and found that he had been proceeded ex parte on 15th October, 2009 and the matter was listed for ex parte evidence on 19th January, 2010. He stated that there was no ill intention nor there was an ulterior motive of the petitioner and no prejudice would be caused to the plaintiff (respondent) in case the order of ex parte was recalled and he was allowed to file WS.

4. The petitioner had not placed any document on record to show that his biological father was hospitalized and the petitioner had been present with his biological father in Yamunanagar (petitioner was given away in adoption by his biological father in childhood). The plea taken by the petitioner that he was away from his house around 20th September, 2009 is belied by the report of the process server which shows that the petitioner was very much present at his home on 1st October, 2009 and he deliberately refused to receive the summons.

5. It is apparent that the petitioner who deliberately refused to receive summons was determined not to honour the notice/summons sent by Court. He, therefore, invited the Court to pass any adverse order and made it a point not to appear in the Court. The postman was not only sent back time and again from his house even the personal service of the summons by the process server sent by the Court was refused. This shows that the petitioner was prepared to suffer an order passed by the Court and was not bothered about the Court. The plea taken by the petitioner that he was not at home from 20th September, 2009 to 10th November, 2009 has to be considered as palpably false and an afterthought. The report of process server shows he was very much present at home on 6th October, 2009.

6. I consider that the trial Court rightly considering the attitude of the petitioner in refusing the summons and in not receiving registered cover as a weighing factor for rejecting the application of the petitioner for setting aside ex parte order and rightly did not allow the petitioner to file WS. The petition has no force and is liable to be dismissed. The petition is hereby dismissed.