

(2021) 11 DEL CK 0086

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1007 Of 2021

P&M Movies Private Limited

APPELLANT

Vs

Sapna @ Sapna Choudhary

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 37, Order 37 Rule 2(3)
Commercial Courts Act, 2015 — Section 2(1)(c)

Citation : (2021) 11 DEL CK 0086

Hon'ble Judges : Amit Bansal, J

Bench : Single Bench

Advocate : Karan Luthra, Aarushi Tikku

Final Decision : Disposed Of

Judgement

Amit Bansal, J

CMs No. 40105/2021 & 40106/2021 (both for exemption)

1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

CM(M) 1007/2021 & CM No. 40104/2021 (for stay)

3. The present petition under Article 227 of the Constitution of India impugns the (i) order dated 27th March, 2021 passed by the District Judge (Commercial Court)-03 (Central), Tis Hazari Courts, Delhi; and, (ii) orders dated 3rd August, 2021, 7th September, 2021, and 4th October, 2021 passed by the ADJ-3 (Central), Tis Hazari Courts, Delhi in CS (Comm) No.102/2021.

4. It is submitted on behalf of the counsel for the petitioner that the suit from which the present petition arises was filed under Order XXXVII of the CPC and as a Commercial Suit in terms of the Commercial Courts Act, 2015. Summons were issued in the suit in Form No.4 to Appendix B of the Code of Civil Procedure,

1908 (CPC), as prescribed for suits under Order XXXVII of the CPC, to be served at the addresses of the defendant in Delhi and Gurgaon.

5. It was noted by the Commercial Court in the order dated 4th March, 2021 that the defendant has been duly served in the matter, yet the defendant has failed to enter appearance in terms of Order XXXVII of the CPC and the matter was posted for judgment on 27th March, 2021. The order of the Commercial Court dated 4th March 2021 is set out below:

"Perusal of record shows that the matter is pending for service of summons of the suit in Form No. 4 in Appendix B of the Code of Civil Procedure, 1908 upon the Defendant. Summons of the suit issued to the Defendant through ordinary process at her Delhi address received back with the refusal report as reflected in the report of the Process Server dated 04.02.2021. Summons of the suit issued to the Defendant through Speed Post as well as through Authorized Courier are reported to be served on 04.02.2021 through Speed Post declaring 'Item Delivered Confirmed' and on 03.02.2021 at Delhi address of the Defendant through courier and on the Gurugram address of the Defendant through courier on 04.02.2021 with the endorsement "Successfully Delivered".

Counsel for the Plaintiff has also placed the Speed Post tracking report with receipts and Courier receipts on the record.

I have carefully gone through the said reports and receipts and I am satisfied that the Defendant has been duly served with the summons of the suit on 03.02.2021 and on 04.02.2021 through the modes as mentioned here-in above but nobody has entered appearance on behalf of the Defendant within the statutory period of 10 days of such service of the summons of the suit upon the Defendant.

In the circumstances, as per the provisions of Order XXXVII CPC in default of her entering the appearance the allegations in the plaint shall be deemed to be admitted and the Plaintiff shall be entitled to a decree.

It is to be noted that the factual matrix of the suit and the documents annexed thereto is voluminous and requires substantial time for consideration. In the meantime, the Counsel for the Plaintiff to file the brief written submissions.

Put up on 27.03.2021 for judgment."

6. Vide order dated 27th March, 2021, the Commercial Court took the view that the aforesaid suit is not covered in the definition of 'Commercial Dispute' in terms of Section 2(1)(c) of the Commercial Courts Act, 2015 and therefore, should not be treated as a Commercial Suit. Accordingly, the suit was transferred to the Court of Principal District and Sessions Judge, Tis Hazari Courts, Delhi, for assignment to a Court of competent jurisdiction. Thereafter, the matter was listed before the Court of Additional District Judge-03 (Central) Tis Hazari Courts, Delhi and vide order dated 3rd August, 2021, the matter was adjourned due to non-appearance of the defendant. On 7th September, 2021, the suit proceeded

ex parte since the defendant did not appear and arguments of the petitioner/plaintiff were heard in part. Subsequently, the matter was listed on 4th October, 2021 for further arguments and on which date the Court of the ADJ-3 (Central), Tis Hazari Courts, Delhi, while noting that the defendant had been duly served, issued fresh summons to the defendant in the suit.

7. Counsel for the petitioner contends that there was no requirement for a fresh service of summons to the respondent/defendant in view of the fact that the respondent was duly served, as noted above in the order dated 4th March, 2021 of the Commercial Court, and failed to enter appearance within the time prescribed under Order XXXVII Rule 2(3) of the CPC. He submits that no amendments have been made in the provision of Order XXXVII of the CPC by the Commercial Courts Act, 2015 and therefore, the summons to be issued in respect of an Order XXXVII Summary Suit remains the same, whether the suit is filed as Ordinary Suit or as a Commercial Suit. He further submits that the change from Commercial to Ordinary Suit was only a change of nomenclature and otherwise the suit continued to be a suit under Order XXXVII of the CPC. He submits that since the allegations in the plaint were to be treated as admitted and the petitioner/plaintiff was entitled to decree on account of non-appearance of the defendant, the impugned order dated 4th October, 2021 requiring fresh service of summons to the respondent is erroneous and should be set aside.

8. He has relied upon the practice directions issued by this Court on 5th December, 2019 to contend that in case where defendant has been proceeded ex parte before the subordinate court, there is no requirement of the advance service of the present petition to the respondent. He further submits that in the facts and circumstances of the case, notice is not required to be issued to the respondent.

9. I have heard the counsel for the petitioner and perused the record. There is merit in the submission of the petitioner that once it is established that summons in respect of the Order XXXVII suit have been served on the respondent and he has failed to enter appearance within 10 days therefrom in terms of Order XXXVII Rule 3, the petitioner is entitled to a decree in his favour. In this regard, the relevant provision of Order XXXVII Rule 2(3) of CPC is set out below:

"The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall 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 High Court from time to time by rules made in that behalf and such decree may be executed forthwith."

10. No amendment in the provisions of Order XXXVII of the CPC have been made by the Commercial Courts Act, 2015 and therefore, the prescribed format of

summons for a suit filed under Order XXXVII remains the same, whether the suit is filed as a Commercial Suit or an Ordinary Suit.

11. It is obligatory on the part of the respondent to enter appearance within the prescribed time limit and failing which the allegations in the plaint shall be deemed to be admitted and the petitioner would be entitled to a decree. There was no requirement for the ADJ to issued fresh summons on the respondent/defendant in view of the fact that the summons in prescribed form under order XXXVII of the CPC have already been served on the respondent. Valuable rights have been created in favour of the petitioner on account of the respondent failing to enter appearance within the prescribed period and the same cannot be defeated by issue of fresh summons to the respondent. Even if the matter was categorized as Commercial Suit instead of an Ordinary Suit and the suit was transferred from the Commercial Court to a Court of ordinary civil jurisdiction, it would not necessitate that fresh summons be issued to the respondent/defendant since the respondent/defendant had already been served in the prescribed format of an Order XXXVII Summary Suit, which remains the same, whether in an Ordinary Suit or a Commercial Suit. The summons prescribed in Form 4 in Appendix B of the CPC has already been served on the respondent, as noted in the order dated 27th March, 2021 of the Commercial Court.

12. Accordingly, the impugned order dated 4th October, 2021 is set aside. The ADJ-3 (Central), Tis Hazari Courts, Delhi shall proceed in accordance with provisions of Order XXXVII of the CPC without issuance of fresh summons to the respondent.

13. The petition stands disposed of.