

(2004) 05 DEL CK 0018
In the Delhi High Court
Case No : FAO 460 of 2002

Ravi Datt

APPELLANT

Vs

Chuni Lal

RESPONDENT

Date of Decision : 27-05-2004

Acts Referred:

Citation : AIR 2004 Delhi 405 : (2004) 75 DRJ 39

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : R.S. Mahla, for the Appellant; Maheshwar Dayal and Sonia Singhani, for the Respondent

Judgement

Madan B. Lokur, J.—The Appellant is aggrieved by an order dated 9th July, 2002 passed by the learned Additional District Judge in Suit No. S-31/2000. By the impugned order, the learned Additional District Judge dismissed an application filed by the Appellant under Order IX Rule 13 of the CPC.

2. The Respondent is the owner of house bearing No.F-125, Village Lado Sarai, Tehsil Mehrauli, New Delhi. This house was built upon a portion of land which devolved upon the Respondent after the death of his father and as per a family settlement.

3. The Appellant, who is the Respondent's son, was earlier living in another house owned by the Respondent but on his asking, the Respondent permitted him to occupy a portion of the house built upon the aforesaid land. Obviously, this was because of the close relationship between the parties.

4. It appears that after the Appellant occupied a portion of the suit premises, the relationship between the parties began to sour with the result that the Respondent asked the Appellant to vacate the portion he had been permitted to occupy. Since the Appellant did not accede to his request, the Respondent filed a suit for possession and for recovery of use and occupation charges.

5. Summons were issued in the suit returnable on 5th April, 2000. The process server apparently went to serve the summons but the Appellant's wife, a lady named Sunita, refused to accept the summons as per the endorsement of the process server. No one appeared for the Appellant on 5th April, 2000.

6. The learned Trial Court then adjourned the matter to 31st May, 2000 but even on that date there was no appearance on behalf of the Appellant. Accordingly, the Appellant was proceeded against ex parte.

7. It appears that in the suit, an interim order was passed on 16th March, 2000 directing the parties to maintain status quo. Since the Respondent wanted to get a new electricity meter installed in the premises, he moved an application for permission to install a new electricity meter in the premises. This application was allowed by the learned Trial Court on 31st May, 2000.

8. On 3rd August, 2000, ex parte evidence of the Respondent was recorded and eventually on 23rd October, 2000 a decree for possession of the suit property was passed in favor of the Respondent. It was also held that the Respondent is entitled to mesne profits/damages at Rs.3,000/- per month from the date of filing of the suit till delivery of possession.

9. On 25th November, 2000, the Appellant moved an application under Order IX Rule 13 of the CPC in which it was stated that he had no knowledge about the suit instituted by the Respondent. He came to know about the proceedings and the ex parte decree only on 22nd November, 2000 when some person from the Delhi Vidyut Board came to the house to install an electricity meter and that person told him about his father (the Respondent) succeeding in some pending case. Immediately, steps were taken by the Appellant to inspect the Court file and move an application under Order IX Rule 13 of the CPC.

10. It was submitted by the Appellant that service has not been effected on him and, Therefore, he was not aware of the proceedings and even if the report of the process server was correct that his wife had refused to accept the summons, the procedure required by Order V Rule 17 of the CPC has not been followed.

11. The provisions of Order V Rule 17 of the CPC read as follows:

"17. Procedure when defendant refuses to accept service, or cannot be found. - Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the

Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

12. During the course of his submissions, learned counsel for the Appellant pointed out several factors to show that service was not properly effected on the Appellant. He pointed out that first of all there was non-compliance of the provisions of Order V Rule 17 of the CPC inasmuch as even if the Appellant's wife Sunita had refused to accept the summons, the process server was duty bound to affix the summons on the outer door or some other conspicuous part of the house. He says that this was not done. Secondly, it was submitted that Sunita is an illiterate lady and, Therefore, the learned Additional District Judge should have acted on the report of refusal with greater circumspection. It was then pointed out, thirdly, that the summons sent by registered post acknowledgment due had come back unserved. It was finally pointed out that the very first service report of refusal was accepted and the learned Trial Court did not re-issue summons to the Appellant. It is submitted that this was necessary since the process server made only one attempt to serve the Appellant.

13. Learned counsel for the respondent on the other hand, submitted that in terms of Order V Rules 14 and 15 of the CPC, service was sought to be effected on the Appellant and since he was not available, the summons were served upon his wife and since she refused to accept the same, there was deemed service on the Appellant. Order V Rules 14 and 15 of the CPC read as follows:

14. Service on agent in charge in suits for immovable property. - Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where service may be on an adult member of defendant's family. - Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his resident and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.- A servant is not a member of the family within the meaning of this rule.

14. I am of the view that learned counsel for the Appellant is right in his contentions. Since a valuable right of the Appellant was involved, the learned Trial Court ought to have been more careful while accepting the report of service on the Appellant. There is no dispute that Sunita is an illiterate lady. This has been specifically averred in the application under Order IX Rule 13 of the CPC

and this has not been denied by the Respondent. This, coupled with the fact that summons sent by registered post came back unserved should have prompted the learned Additional District Judge to try and once again serve the Appellant. Resort to the provisions of Order V Rule 17 of the CPC should not be taken in the first instance nor summons affixed on the very first attempt, if it is refused. An attempt should be made more than once to try and serve the notice and if then also it is not possible to effect service, perhaps service can be effected by affixation, though not on the very first occasion.

15. The facts of the present case show that the process server went on only one occasion and did not go again to find out if the Appellant would be available on some other date or at some other time. In any case, the summons was not affixed even on that occasion. There is a ring of truth in what learned counsel for the Appellant alleges that service on his client was not effected or if effected, it was not proper.

16. For the reasons given above, it is not possible to accept the contention of learned counsel for the Respondent that merely because Sunita refused to accept the summons, Therefore, it must be deemed that the Appellant has been served.

17. There is a big question mark on whether service was effected on the Appellant and the benefit of doubt in this regard must go to him. This is apart from the fact that the procedure as prescribed was not followed. The learned Additional District Judge was, Therefore, not correct in proceeding on the basis that service was effected on the Appellant.

18. Consequently, the impugned order is set aside and it is held that service of summons was not properly effected on the Appellant. The result of this would be that the application under Order IX Rule 13 of the CPC filed by the Appellant must be allowed.

19. The parties are directed to appear before the learned District Judge on 5th July, 2004 who will assign the case to the Court of an Additional District Judge for further proceedings.

20. The Respondent is said to be over 70 years of age and he is not at all getting along with the Appellant, who is his son. Efforts were made by one of the learned judges hearing this appeal to see if it is possible to amicably settle the disputes between the parties but no settlement could be arrived at. Even I have tried to make some effort to see if it is possible for the parties to amicably resolve their disputes but I must regret my inability to get the parties to settle their dispute. May be the learned Additional District Judge can also make a similar effort. If an amicable settlement is not possible, efforts should be made to expedite the disposal of the suit.

21. The appeal is allowed. There will be no order as to costs.

22. I find that there are a large number of cases in which it is alleged that service has not been properly effected resulting in an ex parte decision followed

by an application under Order IX Rule 13 of the CPC for setting aside the ex parte decision. This frequently happens not only in civil matters but also in matters arising under the Industrial Disputes Act, 1947. I think it is generally accepted that the Process Serving Agency in the District Courts needs an overhaul, to avoid recurrence of cases such as the present, and also to avoid a large number of applications being filed under Order IX Rule 13 of the CPC. Consequently, I think the following directions are necessary:-

(a) The learned District Judge should urgently constitute a small Committee of, say, about 4 or 5 judicial officers including the Additional Director, Delhi Judicial Academy, the Administrative Civil Judge and 2 or 3 other judicial officers. This Committee should review the entire working of the Process Serving Agency in the District Courts and make appropriate recommendations to the learned District Judge who will then consider the recommendations and take appropriate action as deemed fit. The Committee will give its report by 20th July, 2004.

(b) The Committee may consider prescribing some guidelines that ought to be followed by a process server. It may also consider prescribing a tabular form to be filled up by a process server to facilitate easy understanding of his report. It may also consider the preparation of a small hand book of a few pages containing all the necessary guidelines that is then made available to all process servers.

(c) The Additional Director, Delhi Judicial Academy should take necessary steps, in consultation with the learned District Judge, to give some orientation course to all the process servers so that they understand the requirements of law while effecting service. The orientation programme may be conducted, if deemed appropriate, on a continuing basis.

23. These are only illustrative suggestions that the Committee may consider while preparing its Report.

24. The Registry will send a copy of this decision to the learned District Judge immediately.