
(2014) 05 CAL CK 0053

In the Calcutta High Court

Case No : G.A. No. 1227 of 2014 and C.S. No. 568 of 1992

R.K.P. Udyog Ltd.

APPELLANT

Vs

Hemraj Mahavir Prosad Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4(4)

Citation : (2014) 05 CAL CK 0053

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Usha Doshi and Mr. Rudra Deb Chowdhury, Advocate for the Appellant; Rahul Kinkar Pandey and Mr. S.K. Tiwari, Advocates for Defendant Nos. 17A, 17B, 17C, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Debangsu Basak, J.—The heir and legal representative of the deceased Defendant No. 20 applied for recording the death of the Defendant No. 20, consequential substitution and for other reliefs.

2. The applicant claimed that he became aware of the pending suit from a postal cover addressed to the deceased Defendant No. 20 containing an application of the plaintiff. The Defendant No. 20 died on October 17, 2005. The applicant claimed that, the plaintiff did not serve writ of summons of the suit on the Defendant No. 20 during his lifetime. The Defendant No. 20 as such could not enter appearance in the suit. The applicant relied upon the report of the office of the Sheriff of Calcutta dated September 20, 2006 which stated that, the writ of summons in respect of the deceased Defendant No. 20 was received by one Mr. K.K. Agarwala. In course of argument, it was contended that, the applicant made enquiries with the office of the Sheriff with regard to the service of writ of summons on the Defendant No. 20 by way of registered post by the advocate's letter dated April 25, 2014. The office of the Sheriff by the writing dated April 29, 2014 stated that, the signature of the receiver on the postal acknowledgement

due card of the Defendant No. 20 was illegible. It was also contended that, the Defendant No. 20 described himself as Shyam Sundar Mahamiya and not Shyam Sundar Agarwal. It was, therefore, claimed that the writ of summons was not served. The plaintiff should be directed to serve the writ of summons of the suit on the applicant. The pleadings should be adequately amended. The applicant be afforded adequate time to file written statement subsequent to service of writ of summons on him.

3. The plaintiff contested the application. It was claimed on behalf of the plaintiff that, the Defendant No. 20 was adequately served during his lifetime with the writ of summons of the suit as would appear from the report of the office of the Sheriff as well as from the original acknowledgement due card. The Defendant No. 20 being served with the writ of summons and such defendant not having entered appearance since after such service, it was submitted on behalf of the plaintiff that, the applicant was not entitled to any of the reliefs as prayed for save and except recording the death of the Defendant No. 20. The plaintiff sought permission to proceed against the heirs and legal representative of the deceased Defendant No. 20 in terms of Order 22 Rule 4(4) of the Code of Civil Procedure, 1908. The plaintiff relied on the application and the affidavit in reply and submitted that, the Defendant No. 20 used both the surnames.

4. I have considered the respective contentions of the parties and the materials on record. The report of the office of the Sheriff dated September 20, 2006 stated that the Defendant No. 20 was served with the writ of summons on April 29, 1993. The writ of summons was received by Mr. K.K. Agarwala on behalf of the Defendant No. 20. The Defendant No. 20 was also served by registered post with acknowledgement due card. The original acknowledgement due card was produced in Court. The same was shown to the advocates of both the parties. The learned advocate for the applicant fairly admitted that the signature appearing on the postal acknowledgement due card was legible contrary to the writing dated April 29, 2014 of the office of the Sheriff annexed to the affidavit in reply.

5. I found from the records that, the Defendant No. 20 was served with the writ of summons of the suit by registered post with acknowledgement due card and that, after receiving such service the Defendant No. 20 did not enter appearance in the suit. Obviously, the Defendant No. 20 during his lifetime did not file any written statement in the suit. The applicant as the heir and legal representative of the deceased Defendant No. 20 could not have a right higher than that of the deceased Defendant No. 20. No explanation was given by the applicant as to why the deceased Defendant No. 20 in spite of service of writ of summons chose not to enter into appearance and file written statement. Curiously, it was only after the suit was placed in the peremptory cause list and was ready for hearing that, the heirs and legal representatives one defendant after the other were discovering that, the deceased defendants were parties to the suit and that they were required to be represented in the suit.

6. The grounds canvassed on behalf of the applicant were not satisfactory. The deceased Defendant No. 20 was adequately served with the writ of summons by registered post with acknowledgement due card on March 23, 1993. The deceased Defendant No. 20 did not enter appearance in the suit and did not file written statement till his death on October 17, 2005. No steps were taken by the heirs and legal representatives of the deceased Defendant No. 20 since 2005 till the date of making of the present application. No explanation was forwarded by the applicant in that regard.

7. I am afraid, I am not in a position to grant the reliefs as prayed for by the applicant save and except directing recording of the death of the Defendant No. 20. The Department will carry out necessary amendment in the cause title of the plaint recording the death of the Defendant No. 20. Such amendment be carried out within 2 weeks from the date of communication of this order by the plaintiff to the Department. The plaintiff will be entitled to proceed against the deceased Defendant No. 20 in terms of Order 22 Rule 4(4) of the Court Of Civil Procedure, 1908.

8. G.A. No. 1227 of 2014 is disposed of accordingly. There will be no order as to costs.