
(1999) 04 DEL CK 0043

In the Delhi High Court

Case No : I.A. 7048 of 1994 and In Suit No.2888 of 1988

State Bank of India

APPELLANT

Vs

M/s. Apna Metals and Others

RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Citation : (1999) 3 AD 521 : (1999) 79 DLT 355 : (1999) 49 DRJ 300 : (1999) 122 PLR 47

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. Jawahar Chawla, for the Appellant; Mr. Jagjit Singh, for the Respondent

Judgement

DR. M.K. Sharma, J.—By this order, I propose to dispose of the application filed by the defendants under Order 9, Rule 13 CPC praying for setting aside the judgment and decree dated 28.11.1991 passed in the present suit.

2. The present suit was instituted by the plaintiff bank against the defendants for recovery of Rs. 2,49,572.78 along with pendente lite and future interest. Summons and notices were issued to the defendants. The defendants, however, could not be served for one reason or the other although, eight attempts were made to serve the defendants. In view of the aforesaid circumstances, the defendants were allowed to be served through substituted manner of service by publication of the summons in a Newspaper. The defendants were thereafter, served through publication. In spite of service on the defendants in the aforesaid manner, the defendants did not appear and accordingly they were ordered to be proceeded ex parte. The plaintiff was allowed to lead evidence by filing an affidavit in terms of which affidavits by way of evidence were filed on behalf of the plaintiff bank and this Court by judgment and order dated 28.11.1991 passed a decree in favor of the plaintiff and against the defendants jointly and severally with interest at the rate of 16.5% pursuant from the date of the suit till realisation. As against the aforesaid judgment and decree passed ex parte

against the defendants, the present application registered as I.A. No. 7048/1994 has been filed on which, I heard the learned counsel appearing for the plaintiff as also the counsel appearing for the defendants.

3. Counsel appearing for the defendants/applicants submitted before me that the defendants were not duly served with the summons and notices issued by this Court and the defendants had knowledge about the passing of the decree in the aforesaid suit only when notice of the execution petition was served on the defendants some time in May, 1994 and accordingly an application has been filed seeking for setting aside the decree which was passed ex parte without properly serving summons and notices on the defendants. It was also submitted that defendant No. 1 closed his business and defendant Nos. 2 and 3 changed their address which fact was also known to the plaintiff bank, but, in order to obtain a decree behind the back of the defendants, changed addresses were not furnished and summons and notices were issued on the old addresses of the defendants which were changed and that fact was known to the plaintiff bank.

4. Counsel appearing for the plaintiff, however, submitted that in spite of eight attempts the defendants could not be served with the summons and notices on the addresses which were available with the plaintiff at that point of time. It was also submitted that the legal notice issued by the plaintiff was served on the defendants on 27.6.1987 at the addresses given in the plaint as against which no reply was filed by the defendants and accordingly the suit was instituted against the defendants at the same addresses. It is also submitted that no intimation was sent by the defendants to the plaintiff at any point of time about the change of the addresses. My attention was also drawn to the contents of the Agreement for Cash Credit which is proved as "Exhibit P.W.1/4". clause 16 of the said Agreement provides that if there be any change in the addresses of the defendants, the same were to be intimated to the plaintiff. It is categorically stated that the defendants did not comply with the said requirement and, Therefore, they are not entitled to get the ex parte decree set aside.

5. I have considered the rival submissions of the learned counsel appearing for the parties.

6. The records available before me disclose that the legal notice issued by the plaintiff to the defendants were served on 27.6.1987 at the address of the defendants given in the plaint. It is also an admitted fact that no reply to the aforesaid legal notice was sent by the defendants. The suit has been instituted by the plaintiff against the defendants on the same addresses at which legal notice were also sent by the plaintiff and served. There is no denial on behalf of the defendants in respect of the allegation of the plaintiff that no intimation regarding the change of address as is required to be given under the Agreement for Cash Credit "Exhibit P.W.1/4" was given to the plaintiff. The defendants bound themselves under the Agreement do intimate and inform the plaintiff about any change of address and the said obligation was neither performed nor discharged.

7. It is stated on behalf of the plaintiff that knowledge about the change of address of the defendants was gathered from the report of the Field Officer of the plaintiff Bank who visited the premises of defendant No. 1 after passing of the decree for verification of the assets of the defendants so as to enable the plaintiff to file the execution petition.

8. The aforesaid Explanation given by the plaintiff for furnishing changed address of the defendants in the execution petition appears to be bona fide and reasonable. The defendants when could not be served with the summons and notices through the ordinary process were allowed to be served by way of substituted manner of service by publication. The defendants were served by way of publication in the newspaper "THE STATESMAN" which has a wide circulation. It thus, cannot be said that the defendants were not properly and duly served and Therefore, they were rightly proceeded ex parte. They also failed to intimate about the change of address which they were required to and bound to intimate under the Agreement entered into with the plaintiff. In that view of the matter, in my considered opinion, no case is made out by the defendants to interfere with and/or to set aside the ex parte decree passed against the defendants. Application accordingly stands dismissed.

I.A. No. 7049/1999.

9. In view of the dismissal of the application registered as I.A. No. 7048/1994, the present application seeking for staying of the execution proceeding has become infructuous and is accordingly dismissed. It is ordered that the execution proceeding shall be proceeded with.