
(1996) 01 DEL CK 0028

In the Delhi High Court

Case No : Interim Application No. 2026 of 1991 and Suit No. 227 of 1988

The Hindustan Times Ltd.

APPELLANT

Vs

Emess Advertising Service

RESPONDENT

Date of Decision : 01-01-1996

Acts Referred:

Citation : (1996) 61 DLT 714

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : S.K. Puri and J.P. Gupta, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) The defendant by this application filed under order IX Rule 13 Cpc, seeks the setting aside of an ex parte decree dated 5.2.1991, by which the suit filed by the plaintiff was decreed for R.-., 7,09,491.62 paise with pendente lite interest @ 12% p.a.

(2) The defendant in this application dated 25.2.1991 tiled on 4.3.1991, contends that she was not aware of the pendency of the suit before the evening of 5.2.1991. The defendant's contention is that one Sh. Yog Raj Sharm

(3) Let me notice some of the facts as revealed from the record :__

(I)The plaintiff had filed the suit on 27.1.1988 for recovery of Rs. 7,55,648.15 paise on account of the advertisements that had been published by the defendant in the newspaper "THE Hindustan TIMES". The defendant. was an accredited advertising agency, with the Indian and Eastern Newspaper Society.

(II)The summons sent to the defendant in the suit were either received back unserved or not received at all. The plaintiff made more than six attempts during July, 1988 to November, 1989 for service on the last known address of the defendant but were unsuccessful. In these circumstances, on 6.3.1990, the application on. the plaintiff for service by substituted means was

allowed and the defendant was directed to be served by publication of summons in the "STATESMAN" for 26.7.1990. The citation was duly published and a copy of the newspaper containing the citation is also said to have been sent at the last known address of the defendant as required under the rules . by post.

(III)As now appeared before the Court on 26 1990, the defendant was proceed ex proceeded ex parte on 26. 8. 1990 and evidence by way of affidavit was directed to be filed. The plaintiff led evidence by way of affidavit and produced the accounts and other records to prove its case including the bills with copies of the advertisements as published in the newspaper.

(IV)The Court vide its judgment dated 5.2.1990 decreed the suit for Rs. 7,09,491.62 paise taking into account certain payments made and admitted by the plaintiff. The execution application was filed which is also pending separately.

(4) I have heard Mr. J.P. Gupta, in support of the application. Mr. Gupta submitted that the defendant had no knowledge of the suit and it was only on 5.2.1991 that he came to know about the suit from the Advocate as set out in the application. Mr. Gupta submitted that there was no reason for the defendant to wait till February, 1991 if she had known about the suit, she would have approached the Court and filed written statement. Mr. Gupta also argued that the plaintiff had failed to comply with the provisions of Order V CPC inasmuch as no affixation of the summons had been ordered or done. There was no record of pasting, hence there was no valid service in accordance with the Order V Rule 20 CPC. Further Mr. Gupta submitted that the plaintiff knew that defendant was paying some amounts, and he could as well have got her served.

(5) I find that the application moved by the defendant does not disclose a ground for setting aside the exparte decree Order Ix Rule 13 CPC. The defendant is required to satisfy the Court that either summons were not duly served or that defendant was prevented by any sufficient cause from appearing, when the suit was called on for hearing. There is only a bald averment in the application that the defendant did not know about the suit or the proceedings The defendant in the instant case, has been served by substituted means i.e. by publication in the newspaper. The statute requires the defendant to be duly served and not personally served. In the instant case, it is not the defendant's contention that either she did not subscribe to the newspaper "STATESMAN" or the copy of the newspaper as required under the Rules was not sent to her address by post. There is no plea that the defendant did not have the knowledge of the suit because either she did not reside at the residential address in the suit or was not in station during the relevant period. In these circumstances, the defendant is deemed to have been duly served. The application also does not disclose any sufficient cause which prevented the defendant from appearing except the averment with regard to there being no knowledge of the suit. Even otherwise, the case set up does not inspire any confidence inasmuch as an Advocate to whom the defendant's husband had contacted for being engaged in another case, which eventually did not materialise is said to have telephoned the

defendant on finding the case in the cause list. In any case what has to be considered is whether the defendant was duly served or not? Once the defendant is duly served, the defendant has to make out sufficient cause which prevented his appearance.

(6) I must also notice that even though the application. did not disclose any ground as contemplated under Order IX Rule 13 Cpc, in the larger interest of Justice, after the application had been moved the Court called upon the defendant to deposit a sum of Rs. 1,00,000.00 and this continued from 192.1991 till April 1992, when the Court granted further time to deposit Rs. 1,00,000.00 within a period of eight weeks. Thereafter further time of six weeks was granted. However, the defendant did not make any deposit. The defendant, thereafter, vide orders dated 18.5.1993, was required to file affidavit specifying its movable and immovable properties. Thereafter, the defendant kept on seeking time to file affidavits. No affidavit as directed has been filed by the defendant despite orders of the Court till date. During the course of the arguments on the application, learned Counsel for the defendant submitted that it would not be possible for the defendant to make any deposit and desired the application be disposed of on merits. It would thus be seen that the defendant despite directions of the Court has neither deposited the amount nor filed affidavit, as required. A period of nearly five years has been allowed to elapse from the date of decree. In view of the foregoing discussion, the option of putting the defendant to terms also gets excluded. The application has no merit and is dismissed.