



2025:DHC:842



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 11.02.2025*+ **RFA 125/2025, CM APPL. 8180/2025 & 8179/2025**

JONEYAppellant

Through: Mr. Manish Awasthi, Advocate

versus

HEMANT VERMARespondent

Through: None

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T (ORAL)**

1. The appellant has assailed judgment and decree dated 07.02.2023 passed by the learned Trial Court, whereby the suit of the respondent under Order XXXVII CPC was decreed for the reason that the appellant failed to file an application for leave to defend. The appellant has also assailed order dated 03.04.2024 of the learned Trial Court whereby the application under Order XXXVII Rule 4 CPC filed by the appellant was dismissed. Having heard learned counsel for appellant and having examined the record, I find no reason to even issue notice of this appeal.

2. Briefly stated, the circumstances relevant for present purposes are as follows. The present respondent filed a suit under Order XXXVII CPC for



2025:DHC:842



recovery of Rs. 4,70,000/- against the appellant, pleading that the appellant took friendly loan of Rs. 4,70,000/- from him on 05.01.2018 for a period of 07 months against a promissory note and receipt duly executed by the appellant, but despite repeated demands and even issuance of legal notice dated 17.08.2018, the appellant did not pay back the loan amount. On this suit, the learned Trial Court issued summons to enter appearance in the format prescribed under Order XXXVII CPC and in compliance the appellant entered appearance. But thereafter, despite service of summons for judgment under Order XXXVII CPC, the appellant opted not to file application seeking leave to defend. Consequently by way of the impugned judgment and decree dated 07.02.2023, the respondent was held entitled to recovery of Rs. 4,70,000/- with *pendente lite* and future interest at a rate of 6% per annum from the appellant. Thereafter, the appellant filed an application dated Nil in March, 2023 under Order XXXVII Rule 4 CPC, alleging that summons for judgment were not served on the appellant. After perusal of record and hearing both sides, the learned Trial Court dismissed the said application vide the impugned order dated 03.04.2024. Hence, the present appeal.

3. Learned counsel for appellant contends that the impugned judgment and decree are not sustainable in the eyes of law because no summons for judgment were served on the appellant. It is contended that the appellant never received the complete copy of paperbook and summons in prescribed



format for judgment. No other argument has been advanced.

4. Admittedly, the appellant was not oblivious of the technical procedure and nature of the summary suit under Order XXXVII CPC. Also admittedly, the appellant duly entered appearance under Order XXXVII CPC, disclosing the address on which summons for judgment ought to be sent. Further admittedly, the address on which the summons for judgment were sent was the same address, which had been furnished by the appellant while entering appearance under Order XXXVII CPC.

5. According to record, the summons for judgment returned with the report that father of the appellant refused to accept the same. As further reflected from record, on 11.03.2020, counsel for the present respondent submitted before the Trial Court that he had not received any copy of the application for leave to defend, so the appellant was directed to supply a copy of the same and the matter was adjourned to 07.07.2020 for arguments on leave to defend. Despite that, till 21.12.2022 the appellant opted not to file any application for leave to defend. It is under such circumstances that learned Trial Court closed the opportunity of the appellant to file application for leave to defend.

6. Before the learned Trial Court, counsel for appellant also alleged that the erstwhile counsel did not perform his duty to file application for leave to



2025:DHC:842



defend within the prescribed period and for that misconduct the appellant be not made to suffer. This contention (*though not raised today*) was rejected by the learned Trial Court making reference to a judicial precedent of this Court. Even otherwise, it is no longer *res integra* that there is no blanket proposition of law that for the misconduct of the counsel, the litigant would invariably stand insulated. Infact, in the present case also, there is nothing on record to suggest any misconduct on the part of the erstwhile counsel. As reflected from record, the appellant was regularly appearing alongwith his counsel before the learned Trial Court till 21.12.2022 but opted not to file an application for leave to defend.

7. Considering the above circumstances, I find no infirmity in the impugned judgment and decree dated 07.02.2023 and the impugned order dated 03.04.2024, so the same are upheld. The appeal is totally devoid of merit. Accordingly, the appeal and the accompanying applications are dismissed.

GIRISH KATHPALIA
(JUDGE)

FEBRUARY 11, 2025/as