M/S. Shalimar Rope Works Ltd.

Vs

M/S Abdul Hussain H. M. Hasanbhai Rassiwala and Others

Civil Appeal No. 366 of 1979

(N. L. Untwali, V. D. Tulzapurkar, P. N. Shinghal JJ)

07.05.1980

JUDGMENT

UNTWALIA, J. –

1. This appeal by special leave is from the Judgment of the Madhya Pradesh High Court reversing the decision of the Second Additional District Judge, Indore in Miscellaneous Judicial Case No. 23 of 1975. The appellant company had filed that case under Order 9, rule 13 of the Code of Civil Procedure, hereinafter called the Code, for setting aside an ex parte decree for Rs. 28,479 passed in favour of the respondent firm on April 22, 1975 against the appellant. The learned Additional District Judge held that summons in the suit was not duly served on the company and it came to know about the decree on July 29, 1975. Hence he set aside the ex parte decree. The respondent firm filed a revision in the High Court under Section 115 of the Code. The High Court allowed the revision, set aside the judgment of the trial Court and upheld the passing of the ex parte decree. Hence this appeal.

2. The respondent filed the suit at Indore on February 24, 1975 against the appellant claiming damages to the tune of Rs. 26,000 on account of the alleged non-delivery of certain goods. Summons in the suit was sent to the registered office of the company in Calcutta and is said to have been served on one Shri Navlakha on March 17, 1975 asking the company to appear at Indore on March 25, 1975 for settlement of issues. Since the company did not appear in the court on that date, eventually, the ex parte decree was passed on April 22, 1975. According to the case of the appellant the company came to know about the ex parte decree for the first time when its constituted attorney Shri S. K. Jhunjhunwala received a notice from the respondent by registered post demanding the decretal dues. Thereupon Shri N. S. Pareek, the Works Secretary of the company who is in charge of the legal matters was sent to Indore to ascertain as to how the ex parte decree came to be passed. Pareek learnt that the summons purported to have been served on Navlakha on March 17, 1975. Navlakha was a mere Office Assistant in the Sales Department of the company. He was neither a secretary nor a Director nor any other principal officer of the company authorised to receive summons in the suit. He did not bring the fact of the receipt of summons by him to the knowledge of any responsible officer of the company. The company remained in dark and, as stated above, learnt for the first time on July 29, 1975 about the passing of the ex parte decree.

3. N. S. Pareek was the only witness examined on behalf of the appellant in the miscellaneous case tried by the learned Additional district Judge. No witness was examined on behalf of the respondent. The trial Court held :

> I hold that handing over of summons to Navlakha who was only an Office Assistant

> working in the company and who was not an officer duly authorised to accept summons on behalf of the company did not amount to valid service of summons on the applicant company.

It also accepted the appellant's case about knowledge of the ex parte decree for the first time on July 29, 1975 and hence the application filed in about a week's time thereafter was held to be within time.

4. The High Court in its impugned judgment has held :

> It is not in dispute that the person who received the summons in the office of the company is not a person who is entitled to be served on behalf of the company in accordance with clause (a) of Rule 2 of Order 29 of CPC.

The High Court, however, took the view that since Navlakha was an employee of the company sitting in its registered office in Calcutta the summons will be deemed to have been duly served on the company within the meaning of the first part of clause (b) of Order 29, Rule 2 of the Code. In the opinion of the High Court since the learned Additional District Judge did not apply his mind to the provision of law contained in clause (b), it committed a material irregularity and illegality in exercise of its jurisdiction in setting aside the ex part decree.

5. In our opinion the High Court was clearly wrong in upsetting the judgment of the trial Court. There was no error in that judgment much less any error of jurisdiction entitling the High Court to interfere with it.

6. Order 29 of the Code is headed "Suits by or against Corporations". There are only three rules in it. We are concerned with Rule 2 which reads as follows :

> Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served -
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> (a) on the secretary, or on any director, or other principal officer of the corporation, or
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> (b) by leaving it sending it by post addressed to the corporation at registered office, or if there is no registered office then at the place where the corporation carries on business.
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> Rule 2 is not an exhaustive provision providing for all modes of service on the company in the sense as to what is meant by service of summons on the Secretary, Director or principal officer. In Jute and Gunny Brokers Ltd. v. Union of India ((1961) 3 SCR 820 : AIR 1961 SC 1214 : 32 Com Cas 845) it was held that the words "principal officer" in clause (a) of Rule 2 would include managing agents and it can, under this rule, be on a juristic person. Accordingly service on managing agents who are a corporation is valid under clause (a).

7. The meaning of clause (b) has got to be understood in the background of the provisions of the Code in Order 5 which is meant for issue and service of summons on natural persons. Sending a summons by post to the registered office of the company, unless the contrary is shown, will be presumed to be service on the company itself. But the first part of clause (b) has got to be

understood with reference to the other provisions of the Code. In Rule 17 of Order 5 it has been provided :

> 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, 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.

8. Sending summons to a corporation by post addressed to it at its registered office may be a good mode of service either by itself, or preferably, by way of an additional mode of service. But leaving the summons at the registered office of the corporation if it is literally interpreted to say that the summons can be left anywhere uncared for in the registered office of the company, then it will lead to anomalous and absurd results. It has to be read in the background of the provision contained in Order 5, rule 17 of the Code. In other words, if the serving peon or bailiff is not able to serve the summons on the Secretary or any Director or any other principal officer of the corporation because either he refuses to sign the summons or is not to be found by the serving person even after due diligence then he can leave the summons at the registered office of the company and make a report to that effect. In the instant case nothing of the kind was done. It was not the case of the respondent in its rejoinder filed in the miscellaneous case that the service of the summons was effected in accordance with the first part of clause (b) of Rule 2 of Order 29 of the Code. Annexure 'A' to the counter-affidavit filed by the respondent is the petition filed by the appellant under Order 9, Rule 13 of the Code. In paragraph 9 of the said petition it was stated :

> Inspection of record of this Hon'ble Court relating to the service of the summons reveals that the bailiff of the Small Cause Court at Calcutta seems to have delivered a copy of the summons to gentleman who is described as an office-assistant, on March 17, 1975 at about 12.40 p.m. No office-assistant of the defendant 1 company is empowered or authorised to receive summons. The original summons which has been returned by the bailiff to this Hon'ble Court, has been signed by one Shri Navlakha. Shri Navlakha was concerned merely with sales and had nothing to do with legal matters generally or with receiving summons in particular. Service of the summons on Shri Navlakha cannot be regarded as due service on the defendant 1 for the purpose of Order 9, rule 13 CPC.

The rejoinder of the respondent is Annexure 'B' to the counter-affidavit. Para 9 of the rejoinder which is in reply to para 9 of the petition reads as follows :

> In reply to para 9 it is stated that the summons was duly served as stated in this para. But it is denied that Shri Navlakha was concerned merely with sales and has nothing to do with legal matters, generally or with receiving summons in particular. It is denied that service on Shri Navlakha cannot be regarded as due service on the company defendant 1 for the purpose of Order 9, Rule 13 CPC. Shri Navlakha was a

> responsible officer who could have intimated the receipt of the summons to his so called bosses. Without prejudice it is submitted that the Madhya Pradesh amendment in Order 9, Rule 13 CPC may kindly be perused.

No where in the rejoinder a stand was taken that the summons was duly served on the company because it was left at the registered office of the company. Reference to the Madhya Pradesh amendment of Order 9, Rule 13 is immaterial as the trial Court has pointed out that the company had no knowledge of the ex parte decree, even otherwise, before July 29, 1975. No contrary finding has been recorded by the High Court.

9. We, therefore, hold that the judgment by the trial Court setting aside the decree was correct. In any event no error of jurisdiction was committed by it. The High Court went wrong in interfering with it. We accordingly allow the appeal, set aside the judgment of the High Court and restore that of the trial Court. The suit shall now proceed to disposal in accordance with the law. We may, however, make it clear that the appellant under the orders of the court had furnished bank guarantee for the decretal amount. It has agreed to continue the same till disposal of the suit. We shall make no order as to costs.

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