

18.07.2024

Pr: Sh. S.C. Sharma, Id. Counsel for applicant.

Sh. Sushil Kumar, Sh.Mayank Rohilla, Sh. Sirajuddin, Ms. Tanya Kapoor and Ms. Shelly Jaiswal, Id. Counsels for respondent with respondent.

1. The present application under Order IX rule 13 read with section 151 of CPC filed on behalf of applicants/defendants for setting aside the exparte order dt. 27.04.2022 and judgment/decreed dt. 08.08.2022 is pending adjudication.

2. It is averred in the application that applicants/defendants have received the summons/notice of execution petition No. 12/2023 on 24.03.2023 and after gone through the contents of the execution petition, they came to know that the plaintiff has filed CS bearing No. 612/2021 against the applicants/defendants for recovery of possession, mesne profit and permanent injunction on the basis of false, frivolous and concocted allegations and it was the plaintiff who with his malafide designs managed the postal officials by making remarks on the envelope as refusal of the summons/notice of the suit in collusion and connivance with Shyam Lata Gupta and Smt. Aruna Gupta, who have been living in two rooms at ground floor whereas the applicants remain out of the house as they go to their office. It is also averred that the process server allegedly visited the suit property on 19.01.2022 and could not find the applicants and found portion of applicants locked and met with one Sh.

Virender Gupta, who is resident of first floor of property in question who told to the process server that ***“SHRI PRASHANT GUPTA AUR SMT. BABY GUPTA SUBAH JALDI OFFICE CHALE JATE HAIN AUR DER RAT KO VAPIS ATE HAIN ABHI NAHIN MILENGE DIN MAIN”*** and the process server filed his report on 25.01.2022, therefore, the applicants never received any summons/notice in regard to the suit filed by plaintiff.

3. It is also averred in the application that applicants/defendants are the husband wife and wife Smt. Baby Gupta is handicapped and walk with the help of leg support and the applicant namely Prashant Kumar has been living at property bearing No. 244/78, ground floor, Gali No.7, School Block, Nera Gyan Vatika Public School, Mandawali, Delhi from his childhood and whereas the applicant No.2 alongwith applicant No.1 has been living in a room at ground floor since day of her marriage with the applicant/JD No.1 and the marriage of applicants was solemnized on 05.02.2007. Further more, the property bearing No. 244/78, ground floor, Gali No.7, School Block, Nera Gyan Vatika Public School, Mandawali, Delhi was owned by Smt. Anaro devi, the Nani of applicant No.1 and that during the life time of Smt.Anaro Devi, she transferred the entire ground floor without roof right to applicants and executed GPA/Agreement for Gift/Affidavit/Possession letter in month of February 2010 and that Smt. Shyam Lata Gupta and Smt. Aruna Gupta, mother of the plaintiff/DH was allowed to reside in one room each at ground floor of the property in question a licensee and they are quarrelsome persons and used to create nuisance with the applicants, therefore, applicants finding no alternative sent a legal demand notice dt. 14.08.2020 to the above named persons thereby terminating the license and asked for vacating the portion of

the ground floor and that plaintiff has not residing at the property in question and has been residing somewhere in Joshi colony Delhi. It is further averred in the application that plaintiff with oblique motive obtained the exparte decree against the applicants on the basis of false, frivolous, concocted allegations and by playing fraud in collusion and connivance with his relative i.e. Shyam Lata Gupta and Smt. Aruna Gupta and that summon/notice of suit has not been duly served upon the applicants and prayed that the applicants/defendants may kindly be allowed thereby setting aside the exparte order dt. 27.04.2022 and exparte judgment/decree dt. 08.08.2022 thereby allowing the applicants/defendants to join the proceedings in the suit.

4. Reply to the above said application was filed by the applicant/ plaintiff wherein it is averred that the applicants/defendants have not come with clean hands and has suppressed all true and material facts and hence present application is liable to dismissed with heavy cost, as the present applicant has been filed only cause unnecessary harassment to the respondent. It is also averred in the reply that the respondent/plaintiff is the lawful absolute owner of the property i.e. built up ground floor portion, up to the extent of ceiling level only, area measuring about 70sq. Yards i.e. 58.82 sq. meters, consisting of three bed rooms, drawing cum dining room, one kitchen and toilet/bathroom, with common staircase, passage and entrance with the right to install/maintain T.V. Antena and water tank on roof/terrace of top floor, apart of property bearing No. 244/78, ground floor, Gali No.7, School Block, Nera Gyan Vatika Public School, Mandawali, Delhi, was purchased by respondent by virtue of registered irrevocable General Power of Attorney, Agreement to Sell, affidavit, possession letter, Receipt, Deed of WILL dt. 08.0-9.2011 and registered from the Sub Registrar-VIII, New Delhi vide registration No. 8,002,

volume No. 3,879, Book No. 4, page No. 19 to 25. It is also averred in the reply that in the year 2007, the respondent/applicant permitted both the defendants to reside in the above said suit property as a licensee as the applicants are the relatives of the defendant but now as per knowledge of the defendant, the legal notice sent by the applicant are based upon false and fabricated facts and the applicants just want to grab the suit property and that due to misconduct of the applicants, the defendant do not want to keep the applicant as a licensee in his premises and terminated their license from 26.09.2020. All other averments made in application are denied by the plaintiff and prayed for the dismissal of the present application.

5. Arguments heard. Record perused and considered.

6. Report of process server dt. 25.01.2022 reflects that the defendants were not served through process server, due to the reason mentioned in the report, i.e. one neighbour Sh. Virender Gupta informed that the “defendant leave for the office in early morning and come back at late night and they could not be met in day time.” Further more, report on postal envelopes is with regard to “Refusal to take by addressee”. It is relevant to note that process server visited the suit property on 19.01.2022 and the postman visited the suit property on 22.01.2022.

7. Order of this court, dt. 24.02.2022 reveals that the said process through post was considered as deemed service and the matter was proceeded further.

8. It is pertinent to note here that defendants have made allegations against the plaintiff that plaintiff managed the postal officials by making remark on the

envelope as refusal of summons/notice of the suit in collusion and connivance with the Shyam Lata Gupta and Smt. Aruna Gupta, who have been living in two rooms on ground floor, whereas the applicants remain out of the house as they go to their office. It is further pertinent to note that the defendants averred in their application that they never received any summon or notice with regard to present suit as reflected by endorsement.

9. In view of the allegations made in application and considering the fact that the defendants were not served through process server, this court is of the opinion that the facts mentioned in the application creates a doubt whether the summon/notice were duly served through postal or not.

10. This court is of the opinion that the defendant/applicant should be given an opportunity to prove his allegation made by them against the plaintiff/respondent. Hence, both the parties are at liberty to lead evidence to prove/disprove the following:

1. Whether the plaintiff manipulated the postal service of summons in the present suit? OPA.

Put up for evidence of applicant/further proceedings on 01.08.2024.

(Pooja Jain)
ADJ-03(East)
KKD Courts-18.07.2024