

CS (COMM.) No.469/23
Virat Mohan Vs. Aditya Birla Finance Ltd.

11.12.2024

Present : None for plaintiff.

Mr. Sagar, Ld. Counsel for the defendant
through VC.

As no one has appeared on behalf of the plaintiff, matter is adjourned for arguments on the pending application to 10.03.2025.

(Shirish Aggarwal)
District Judge-03
Patiala House Courts, New Delhi
11.12.2024

At this stage, Mr. Naman Sabharwal and Mr. Maduresh Chaudhary, Ld. Counsels for the plaintiff have appeared in person.

Mr. Sagar, Ld. Proxy Counsel for the defendant is present through video conferencing.

Ld. Counsels for the plaintiff request that the matter be taken up for consideration and the pending applications be decided.

Ld. Proxy Counsel for the defendant submits that he is prepared to address arguments.

In view of the above submissions, the matter is taken up for consideration.

First the application of the defendant under Section 151 CPC for setting aside ex-parte proceedings will be decided.

As per the endorsement of the Ahlmad on the ordersheet dated 29.08.2023, summons were served upon the defendant on 04.09.2023.

On the next date of hearing i.e. 18.11.2023, the Ld. Predecessor of the Court observed that despite service of summons, no written statement has been filed and no one has appeared on behalf of the defendant despite repeated calls of the case. Accordingly, the defendant was proceeded ex-parte.

There are two prayers in the application of the defendant.

The first prayer is to set aside the ex-parte proceedings. Second prayer is to grant leave to the defendant to contest the case.

It is settled law that a defendant who has been proceeded ex-parte can join the Court proceedings at any stage.

After the defendant was proceeded ex-parte on 18.11.2023, no effective proceedings have been taken place in the present case, for which the defendant needs to turn the clock back for redoing of Court proceedings.

It is stated in the application that on 18.11.2023, the defendant was unable to appear before the Court since he was required to travel out of station.

It is relevant to note that presence of the defendant was not required on 18.11.2023 and therefore the explanation furnished in the application has no merit. However, a lenient view is taken and the request for setting aside ex-parte order dated 18.11.2023 is allowed and the defendant is permitted to join the

Court proceedings, which in any case the defendant had a right to do.

The second prayer of the defendant is for granting leave to the defendant to contest the case.

Even if a defendant is ex-parte, he has a right to cross-examine the plaintiff and his witnesses and to that limited extent, has a right to contest the case.

However, written statement of the defendant cannot be taken on record since no explanation has been furnished for not filing the written statement within the prescribed time period of 30 days from the date of service of summons.

With the above observations, the second prayer of the defendant stands decided.

Application of the defendant under Section 151 CPC is disposed off.

At the request of Ld. Counsels for the plaintiff, the application of the plaintiff under Order 7 Rule 14 of CPC is adjourned to 17.02.2025.

The date already fixed i.e. 10.03.2025 is hereby canceled.

(Shirish Aggarwal)
District Judge-03
Patiala House Courts, New Delhi
11.12.2024