

CS DJ 495/21
MITHLESH GUPTA Vs. VINOD KUMAR

22.11.2022

Present: Plaintiff in person with counsel Sh. Prabhakar
Tiwari.
None for defendant.

Heard. Perused.

Case is today fixed for orders.

Plaintiff has filed the present suit u/o 37 of CPC for recovery of Rs. 10 Lakhs from defendant. As per plaint, plaintiff and defendant were having friendly relations and defendant had taken friendly loan from plaintiff on different dates. In order to discharge his liability defendant had issued a cheque bearing no. 487998, dated 26.03.2020 for a sum of Rs. 10 Lakhs, drawn on SBI, Jahangir Puri Branch, Delhi, in favour of plaintiff. Plaintiff presented the said cheque for encashment but the said cheque was dishonored and was returned back due to reasons "Funds Insufficient". Plaintiff informed the defendant about the factum of dishonor of aforesaid cheque but defendant failed to pay the amount due to the plaintiff. Plaintiff got sent a legal notice dated 21.04.2020 to defendant but in spite of service of said legal notice defendant defaulted in paying the said amount to plaintiff. Consequently, plaintiff filed the present suit u/o 37 of CPC for recovery of Rs. 10 Lakhs. Plaintiff has filed the aforesaid original cheque as well as cheque returning memo on record.

Vide order dated 07.06.2022, summons of the suit as prescribed u/o 37 of CPC were ordered to be issued against defendant. The summons were duly served upon defendant on 18.07.2022. In spite of service of summons on 18.07.2022

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defendant failed to file his appearance as envisaged u/o 37 Rule 2 (3) of CPC, within stipulated time i.e. 10 days. It is pertinent to mention that memo of appearance was filed on behalf of defendant on 23.08.2022.

Order 37 (2) (3) CPC postulates as under :-

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

Order 37 (3) (1) CPC postulates as under :-

3. Procedure for the appearance of defendant, –

(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under the rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time **within ten days of such service**, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notice on him.

In the present case, summons for appearance, as prescribed u/o 37 of CPC were served upon defendant on 18.07.2022. Defendant had filed appearance on 23.08.2022 i.e. after more than one month of service of summons upon him. Defendant was under an obligation to file appearance within ten days from service of summons upon him. Order 37 of CPC is a complete code in itself and there is no provision for condonation of

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delay in filing the appearance as envisaged u/o 37 (3) (1) of CPC. Hence, the appearance filed by defendant after stipulated time of ten days is no appearance in the eyes of law and filing of appearance after expiry of ten days is as good as non-filing of appearance. Consequently, the allegations in the plaint are deemed to have been admitted and plaintiff is entitled to a decree.

Plaintiff has filed original cheque and cheque returning memo on record. The cheque was dishonored for insufficient funds.

In view of aforesaid facts and circumstances, the present suit filed by plaintiff is, hereby, decreed in his favour and against the defendant. A decree for a sum of Rs. 10 Lakhs is hereby passed in favour of plaintiff and against the defendant. The plaintiff shall also be entitled to interest @ 6% per annum from the date of filing of present suit till today i.e. date of decree. Decree sheet be prepared accordingly.

File be consigned to record room after necessary compliance.

(Deepak Dabas)
ADJ-1(North)/Rohini Courts
Delhi/22.11.2022