

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS,
DELHI**

Civil Suit No.200/20

In the matter of:-

M/s ASK Automotive Pvt. Ltd.

.....Plaintiff

Vs.

Sh. Deepak Kumar Kumar & Anr.

.....Defendants

23.02.2024

ORDER

Vide this order I shall dispose off the application under Order 9 Rule 7 read with Section 151 CPC filed on behalf of defendant no.2 for setting aside the ex parte order dated 14.02.2022.

Alongwith application under Order 9 Rule 7 CPC, an application under Section 5 of the Limitation Act for condonation of delay has also been filed by the defendant no.2.

No reply to the applications of defendant no.2 has been filed on behalf of the plaintiff.

Arguments on this application were heard on behalf of the parties.

During the course of arguments, ld. Counsel for defendant no.2 submitted that the defendant no.2 Sh. Alok Aggarwal who has been wrongly mentioned as Alok Kumar in the present case, is a sole proprietor of M/s Neel Kanth Enterprises and he is running his business from ground floor of KH-1921, Krishna

Vihar, Loni, Ghaziabad, U.P. Ld. counsel for defendant no.2 further submitted that on 16.05.2022, some officials of plaintiff company came to the premises of the defendant no.2 and tried to plant a false case of infringement of the copyright and trademark of the plaintiff company against the defendant no.2 and it was also revealed by them that one case against him is pending in Karkardooma Court, the details of which were not supplied to him despite being asked and was only told that the said case will be decided soon against him. Ld. counsel for defendant no.2 further submitted that after two days of the said incident, on 18.05.2022, the defendant no.2 got a WhatsApp message from unknown number (+919716524997) having a copy of attachment of order dated 14.02.2022 passed by the court of Ld. ADJ-01 (Shahdara) and therefore, immediately on receipt of the said message the defendant no.2 had tried to find out the veracity of the said message and case but could not succeed and court vacations got started which ended on June 30 and as such the defendant no.2 then contacted his present advocate and it was revealed that due to non appearance of the defendant no.2, this ex parte order has been passed against him. Ld. counsel for defendant no.2 further submitted that thereafter the defendant no.2 has engaged Mr. Nitin Bhardwaj, Advocate to take appropriate steps in this regard and accordingly the said counsel had inspected the judicial file and application for certified copies of the case file, which he got received on 22.07.2022 and it was revealed that on 14.02.2022, this court was pleased to proceed ex parte proceedings against the defendant no.2 as the service of summons under Order V Rule 20 CPC had been effected upon wrongly mentioned name and address of defendant no.2. Ld. counsel for defendant no.2 further submitted that the alleged

serve of summons of the present suit were never duly served upon the defendant no.2 as the name and address of the defendant was incorrect and hence the defendant no. 2 could not appear before this court earlier. Ld. counsel for defendant no.2 further submitted that the present matter is at the early stage of framing of issues and therefore the present application does not hamper the principles of natural justice and the defendant no.2 may kindly be allowed to join the proceedings of the present matter and contest the same as there are bright chances of succeeding of defendant no.2 in the present case. Ld. counsel for defendant no.2 further submitted that the defendant no.2 was never served upon the correct name and address of defendant no.2 and hence never received any intimation about the said case from any corner. Ld. counsel for defendant no.2 further submitted that non appearance of defendant no.2 was neither intentional nor deliberate but due to the aforesaid reasons the defendant no.2 could not appear before the court in the present matter. After making the abovesaid submissions ld. Counsel for defendant no.2 requested to allow the present application.

In support of his contentions, ld. Counsel for defendant no.2 has placed reliance on the case decided by Hon'ble High Court of Delhi titled as Madan Lal Maurya Vs Pratap Singh (CM (M) No.475/2007).

Per contra, ld. Counsel for plaintiff vehemently opposed the application, submitting that the defendant no.2 has not mentioned as to how much delay is there in filing the present application. She further submitted that the defendant no.2 could have informed the court that he had applied for certified copy of case file and even his Advocate can file a Vakalatnama on his

behalf but no such steps were ever taken by the defendant no.2. Hence, she requested to dismiss the applications of the defendant no.2.

I have heard the arguments on behalf of the parties and also perused the record.

A perusal of record reveals that the name and address of defendant no.2 is mentioned in the memo of parties as Alok Kumar, Khasra No.337, Phase 1, Krishna Vihar Chowk, Sewadham, Loni, Ghaziabad, Uttar Pradesh. However, the defendant no.2 could not be served by ordinary process on this address. Thereafter, on 25.10.2018 ld. Counsel for plaintiff filed fresh address of defendant no.2 i.e. Khasra No.1921, Gali No.1, Phase-1, Krishna Vihar, Loni, Ghaziabad, U.P.-201102. Fresh summons were issued to the defendant no.2 at his fresh address. However, on 15.07.2019, ld. Counsel for plaintiff submitted that he had taken dasti summons and during the course of execution of the summons, it came to the knowledge that defendant no.2 had 'left' the premises. Thereafter, on 21.09.2019, ld. Counsel for plaintiff filed an application under Order V Rule 20 CPC for substituting service of defendant no.2 by way of publication. On 06.01.2020, ld. Counsel for plaintiff submitted that there is no other address of the defendant no.2 available with the plaintiff and she requested for substituted service of defendant no.2. The said application was allowed vide order dated 06.01.2020 and the defendant no.2 was ordered to be served by way of publication in the newspaper 'The Stateman'. Accordingly, the defendant no.2 was served by way of publication in the said newspaper but he did not appear before the court despite the service and accordingly the defendant no.2 was proceeded ex parte vide order dated 14.02.2022 and after completion of the

pleadings issues were framed and the matter was posted for plaintiff evidence. However, in the meantime the present application alongwith an application under Section 5 of the Limitation Act was filed on behalf of defendant no.2.

The main contention of the defendant no.2 is that his name is not Alok Kumar, rather his correct name is Alok Aggarwal. The defendant no.2 also took a stand that he is running business from the address KH-1921, Krishna Vihar, Loni, Ghaziabad, U.P. and not from Khasra No.337, Phase 1, Krishna Vihar Chowk, Sewadham, Loni, Ghaziabad, Uttar Pradesh which is mentioned in publication dated 28.02.2020.

A perusal of the record would go to show that in memo of parties the name and address of the defendant no.2 is mentioned as “Mr. Alok Kumar, Khasra No.No.337, Phase 1, Krishna Vihar Chowk, Sewadham, Loni, Ghaziabad, Uttar Pradesh”. Record further reveals that initially the defendant no.2 could not be served on this address by ordinary process and thereafter, Id. Counsel for plaintiff filed an application thereby furnishing the fresh address of defendant no.2 i.e. Khasra No.1921, Gali No.1, Phase-1, Krishna Vihar, Loni, Ghaziabad, U.P.-201102. Therefore, the earlier address i.e. Khasra No.337, Phase 1, Krishna Vihar Chowk, Sewadham, Loni, Ghaziabad, Uttar Pradesh should not have been mentioned in the publication dated 28.02.2020, since this address does not pertain to the defendant no.2. The defendant no.2 also filed his affidavit in support of the present applications by mentioning his name as Alok Aggarwal and not Alok Kumar.

In *Madan Lal Maurya Vs Pratap Singh (supra)*, Hon’ble High Court of Delhi held that “..... *the trial court should have allowed the application under Order 9 Rule & CPC simply on*

the ground that the name of the petitioner was not correctly stated by the respondent in the suit”.

Therefore, in view of the aforesaid discussion, this court is of the opinion that since name and address of defendant no.2 was not correctly mentioned, it cannot be said that the defendant no.2 was properly served by way of publication. There is no force in the submissions of ld. Counsel for plaintiff that the defendant no.2 should have apprised that he had applied for certified copy of case file or his Advocate could have filed Vakaltnamea on his behalf. Whatever delay caused in the matter is only due to wrong mentioning of name and address of defendant no.2. Therefore, the defendant no.2 cannot be held liable for the said delay. Accordingly, both the applications of the defendant no.2 i.e. one under Order 9 Rule 7 CPC and under Section 5 of the Limitation Act are hereby allowed. Ex-parte order against the defendant no.2 is hereby set aside 14.02.2022.

Defendant no.2 is directed to file written statement within 30 days from today with an advance copy to opposite party.

Both the applications are disposed of accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 23.02.2024).

(RA MESH KUMAR-II)
ADJ-01/KKD Court
Delhi