

Kuldeep Panwar vs. IB Singh Parihar & Ors.

09.11.2017

Present: Sh.Harish Sehrawat, counsel for the plaintiff.

Sh. Suresh Shah, counsel for defendant no.1.

Sh. O. P. Sharma, counsel for defendant no.2.

Sh. Vinod Suhag, counsel for defendant no.3.

Sh. S. C. Bhansali, counsel for defendant nos.4 & 5.

Counsel for defendant no.1 filed an application under Order 9 Rule 7 CPC for setting aside the order dated 24.10.2017 vide which defendant no.1 was proceeded ex parte and his right to file written statement was closed. Counsel for the plaintiff submits that he has no objection, if the present application is allowed.

For the reasons mentioned in the application coupled with no objection by the plaintiff, the application under Order 9 Rule 7 CPC is allowed.

Written statement along with reply to application under Order 39 Rule 1 & 2 CPC filed today is taken on record. Copy given.

Written statement along with certain documents as per list of documents filed on behalf of defendant no.3. Copy given.

Counsel for defendant no.2 filed today an application under Order 9 Rule 7 CPC for setting aside the order dated 24./10.2017 vide which defendant no.2 was proceeded *ex parte*. It is averred in the application that no process server or the post man came to residence of defendant no.2 for serving the summons upon him. The applicant never received the summons of this court. Further, when defendant no.3 approached defendant no.2 and informed him about the pendency of this case.

Heard. Record perused. Process server has given his report that he met with the defendant no.2 at the address given, however, he refused to take the summons and thereafter the copy of the summons has been affixed at the address given.

There is no reason to disbelieve the statement of process server. Moreover, the defendant no.2/applicant has not stated that when and where he met with defendant no.3, who informed him

about the pendency of the case. Defendant has not given sufficient ground for his absence on the relevant date, however, since the suit is at the initial stage and the same would be decided on merits, the present application is allowed and accordingly order dated 24.10.2017 is recalled in respect of defendant no.2, subject to cost of Rs.3000/- to be deposited with DLSA and receipt thereof be shown on the next date. At this stage, counsel for defendant no.2 seeks time to file written statement. Let the written statement be filed within 15 days from today under advance copy to opposite party, who shall file replication thereto, if any on the next date.

At this stage, counsels appearing for the parties submit that on instructions received from the parties, they undertake that parties shall maintain the status quo with regard to possession and creating third party interest qua the suit property. On their submission, all the parties are directed to maintain the status quo with respect to possession and creating third party interest qua the suit property till final disposal of the case. **Application under Order 39 Rule 1 & 2 CPC is disposed of accordingly.**

Now to come up for filing of written statement by

defendant no.2, replication to the written statements filed by defendant nos.2 & 3, if any, admission/denial of documents, framing of issues and for exploring the possibility of settlement if any on 28.11.2017.

(MOHD. FARRUKH)
ADJ (SW)/PILOT COURT/ DWARKA COURTS(an)
09.11.2017