

Civ DJ No.13072/16

Arun Gupta vs. Rakesh Kumar Gupta & ors.

02.09.2022

Present : Sh. Sumit Gupta, ld. counsel for plaintiff.

Ms. Palavi Vashisht, ld counsel for defendant no.1.

Sh. Kapil Singhal, ld counsel for defendant nos. 2, 3 & 4.

Heard on the application of the defendant no.1 filed under Order 8 Rule 10 CPC and application under Section 340 Cr.P.C.

Defendant no.1 averred that he was not served with the summons of the suit. The summons of the suit were received by Mukesh Gupta stating to be son of defendant no.1. He is not his son and he is the defendant no.2 in the instant suit. Thereafter, the Court was pleased to strike off the defence of defendant no.1 vide order dated 15.03.2017 on account of not filing written statement. He further submits that defendant no.2 deliberately furnished false information to the process server and, thus, he is liable to be prosecuted under Section 340 Cr.P.C. He prayed that order dated 15.03.2017 may be set aside.

Record perused.

Perusal of the service report makes it clear that Mukesh Gupta received summons on behalf of defendant no.1. However, the defendant no.1 appeared alongwith his counsel before the Court on 05.10.2016. Thus, it cannot be said that defendant no.1 was oblivious of the proceedings of the instant suit. Ld. Predecessor has struck off the defence of defendant no.1 vide order dt.15.03.2017. The defendant no.1 did not challenge the order

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dt.15.03.2017 and he has been constantly appearing in this matter. In view thereof, there is no merit in the application under Order 8 Rule 10 CPC and application under Section 340 Cr.P.C. Both the applications are accordingly dismissed.

Put up for final arguments on **30.09.2022**.

(Manish Sharma)  
Additional District Judge-01(West)  
Tis Hazari Courts, Delhi