

CS/1133/2020

Saini Nutrition Shoppe Vs Parag Milk Foods Ltd. & Others

Present: Sh. Khushbir Singh, Advocate for the plaintiff.
Sh. Ravi B Mahajan, Advocate for the applicant/defendants.

Application under Order 9 Rule 7 read with Section 151 CPC for setting aside the ex parte proceedings taken against defendants/ applicant on dated 23.03.2021.

ORDER:

1. Vide order this court shall dispose off an application for setting aside ex-parte order dated 23.03.2021 moved by applicant/defendants

2. Heard on the above said application. In the application, it is contended that applicants were never served with the notice/summons personally, issued by this Court and the reports/endorsement on the summons, if any, are false and concocted and the same have been obtained by the plaintiff in connivance of the concerned Process Server. No process server ever approached the applicants for the service of the summons personally at the address mentioned in the plaint. The report of the process server if any, is false one and obtained by the plaintiff by the plaintiff in connivance with the concerned process server. The applicants never received any envelope containing summons of this Court. No publication has ever been affected in a newspaper having circulation near the office of the defendants. The applicants were never served legally even once in the present case and the applicants were never aware about the exparte proceedings initiated against them. It is further submitted that the plaintiff raised a proclamation before a business

associate working with the applicants/defendants that he has secured some favourable Court orders and as such, the applicants approached their present counsel, who made enquirers online and it came to the knowledge of the applicants through their counsel that the plaintiff has filed this false suit and procured a favourable order against applicants and lastly, prayed that ex parte order dated 23.03.2021 be set aside against the defendants.

3. On the other hand, reply to above said application filed by the plaintiff in which it is submitted that the present application is legally not maintainable and the defendants are estopped by their own act and conduct from filing the present application and the present application is an abuse of process of law and the same has been filed by the defendants with a malafide intention to delay the proceedings. Further, it is averred that in the present case, previously, the defendants were served through ordinary way. They were well known regarding the pendency of case against them but they did not appear in the Court intentionally and willfully and as such later on for effecting service of the defendants publication was also effected for the newspaper Times of India but even then, the defendants did not appear in Court intentionally and willfully and as such this Court has rightly proceeded them against exparte. While denying other contents of the application, a prayer is made to dismiss the same.

4. After hearing both the learned counsels for the parties and perusing the judicial file carefully, this Court is of the considered view that the case is still at preliminary stage and justice demands that no prejudice shall be caused to any of the parties and ***no party shall be***

condemned unheard". Present application is supported with a duly sworn affidavit of the applicant/defendants. Moreover, the applicant/defendants wants to contest the case on merit and the same will help the Court in deciding the case on merits effectively. Accordingly, the present application is hereby **allowed** and the exparte order dated 23.03.2021 against the defendants stands set aside. However, on account of delay, the defendants are burdened with cost of Rs.2000/- to be paid by them to the plaintiff.

5. Now, to come up on 07.07.2025 for payment of cost and filing written statement.

Pronounced in Open Court:
Dated: 22.05.2025

(Garima Gupta),
Civil Judge (Jr.Divn.),
Amritsar, UID-PB0535