

OCD-14

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM /515/2024
[OLD NO. CS/128/2023]
IA NO: GA-COM/1/2024

SHIB SHANKAR RUNGTA PROP OF S S RUNGTA AND CO
VS
JAI JUTE AND INDUSTRIES LTD

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date: November 8, 2024.

Appearance :
Ms. Swapna Choubey, Adv.
Mr. Udit Agarwal, Adv.
... for the plaintiff

Mr. D.N. Sharma, Adv.
Mr. Nilay Sengupta, Adv.
Mr. Sailendra Jain, Adv.
Mr. Abhishek Jain, Adv.
Mr. Ayan Dutta, Adv
...for the defendant

The Court: Ms. Swapna Choubey, learned counsel, is appearing for the plaintiff.

Mr. D.N. Sharma, learned counsel, is appearing for the defendant.

The defendant has filed the present application being GA-COM/1/2024 praying for extension of time to file written statement. Counsel for the defendant submits that as per the service report dated 30th July, 2024 issued by the Deputy Sheriff of Calcutta of this Court, the Bailiff has served the writ of summons upon Gajmukh Vinimay Pvt. Ltd. on 12th October, 2023 which is not the defendant company. He further submits that the Bailiff has served the writ of summons upon Gajmukh Vinimay Pvt.

Ltd. taking as the new name of the defendant company. From the service report it is found that the plaintiff has also sent the writ of summons through Speed Post which was duly delivered on 29th September, 2023.

Counsel for the defendant has relied upon a lease deed dated 6th April, 2023 entered between Jai Jute and Industries Ltd. (defendant herein) and Gajmukh Vinimay Pvt. Ltd. wherein the defendant had leased out the jute mill to Gajmukh Vinimay Pvt. Ltd.

Counsel for the defendant submits that from the report of the Sheriff it is crystal clear that the writ of summons was not served upon the defendant but it was served to Gajmukh Vinimay Pvt. Ltd.

Counsel for the defendant further submits that as regard the service of the writ of summons through the Speed Post, in the said report the track report is not enclosed and after verification of the record, the Counsel for the defendant has requested the office of the Sheriff for providing the track report or the acknowledgment receipt with regard to service of writ of summons through Speed Post, but in spite of request to Sheriff, the office has not provided the acknowledgment or the track report to show that the writ of summons was delivered to the defendant.

Counsel for the defendant submits that due to mistake on the part of the Bailiff, as the writ of summons was served upon the Gajmukh Vinimay Pvt. Ltd. and not upon the defendant, due to which the defendant could not appear before this Court and file written statement and as such the defendant may be given liberty to file written statement.

The learned counsel for the defendant by way of supplementary affidavit has disclosed the map along with two photographs wherein in one

photograph the gate of Gajmukh Vinimay Pvt. Ltd. is appearing and in another photograph in the gate the name of Jai Jute and Industries Ltd. is appearing. Counsel for the defendant submits that the land in question is a big chunk of land and plaintiff has leased out the jute mill to Gajmukh Vinimay Pvt. Ltd. and the said the company has fixed his gate by the name of Gajmukh Vinimay Pvt. Ltd. and by some distance the defendant has fixed the gate by the name of Jai Jute and Industries Ltd., but the notice was not served upon the defendant.

Per contra learned advocate for the plaintiff draws the attention of this Court to the address mentioned in the plaint which reads as follows:

“JAI JUTE & INDUSTRIES LIMITED, an existing company incorporated under the provision of the Companies Act, 1956 having its registered office at Kanthal Para, P.O. Naihati District 24, Pargana (North), Kolkata – 743165 outside the jurisdiction aforesaid”.

Learned counsel for the plaintiff submits that the plaintiff has lodged writ of summons at the address which is appearing in the cause title and the writ of summons was served upon the defendant by way of Process Server as well as through the Speed post in the same address.

Learned counsel for the plaintiff further submits that it is not the case of the defendant that the address mentioned in the plaint is a different address. Counsel for the plaintiff submits that the writ of summons was served upon the defendant by two ways in the address of the defendant and the said address is also appearing in the master data of the defendant company.

Counsel for the plaintiff submits that the writ of summons was served upon the defendant but in spite of service of writ of summons, the defendant has not appeared before this Court or filed written statement. Counsel for the plaintiff further submits that prior to initiation of the suit, the plaintiff had initiated pre institution mediation process before the Mediation Centre and the Mediation Centre has issued notices to the mail id of the defendant but in spite of receipt of the emails, the defendant failed to appear before the Mediation Centre for settlement the dispute between the parties. Subsequently, the plaintiff has filed the suit and issued the writ of summons which was dully served but the defendant has chosen not to appear. Counsel for the plaintiff submits that the defendant has not appeared in the matter and the suit proceeded 'undefended' against the defendant and the suit is at the stage of argument.

Heard the learned counsel for the respective parties. Perused the materials on record.

From the service report dated 30th July, 2024 it reveals that the writ of summons was duly served by hand as well as through postal service on 12th October, 2023 and 29th September, 2023 respectively. In the service report it is mentioned that the writ of summons was served on 12th October, 2023 upon the security in charge of the defendant company, namely, Gajmukh Vinimay Pvt. Ltd. that is formerly named Jai Jute and Industries Ltd. and other report shows that the item was delivered on 29th September, 2023. Now the counsel for the defendant has argued that the writ of summons was served to Gajmukh Vinimay Pvt. Ltd. and not to the Jai Jute and Industries Ltd. since both the companies are different entity. The

defendant has relied upon the lease deed dated 6th April, 2023 wherein the plaintiff company has leased the Jai Jute and Industries Ltd. to Gajmukh Vinimay Pvt. Ltd. The address of the defendant has not been changed. In the lease deed in Clause XVII under the heading CONFIDENTIALITY it is mentioned that both “Both the LESSOR and LESSEE shall treat this agreement and related understandings confidential and shall not disclose to any other person without the prior written consent of the other Party and specifically indemnify the other in this regard.”

From the said Clause it further reveals that the defendant has confidentially entered into a lease agreement by keeping the same address. The writ of summons was served to the same address and thus at this stage the defendant cannot take the stand that the writ of summons was served upon the other person or entity though the defendant is not denying with regard the address of the defendant. Counsel for the defendant has further admitted that the gate of Jai Jute is also situated nearby to the gate of Gajmukh Vinimay Pvt. Ltd. If it is taken into consideration that the security guard might have forwarded the writ of summons to the defendant company but the defendant has suppressed the said fact and made out a new case by taking the benefit of the service report that the notice was served upon the security guard of the Gajmukh Vinimay Pvt. Ltd. The defendant has not justified with regard to delivery of writ of summons by Speed Post. He has not made any submission with regard to Speed Post though the report says that the Speed Post was delivered in the same address.

Considering the above, this Court does not find any merit in the present application. Accordingly GA-COM/1/2024 is dismissed.

Counsel for the plaintiff submits that the matter is at the stage of argument and prays for fixing the matter for argument.

Let the matter appear on 18th November, 2024 under the heading “Argument”.

(KRISHNA RAO, J.)

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