

**Sh. Paras Gulati Vs. Sh. Ram Chander**

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**SooperKanoon Citation :** [sooperkanoon.com/1171960](http://sooperkanoon.com/1171960)

**Court :** Delhi

**Decided On :** Oct-29-2014

**Judge :** Valmiki J. Mehta

**Appellant :** Sh. Paras Gulati

**Respondent :** Sh. Ram Chander

**Judgement :**

\* + IN THE HIGH COURT OF DELHI AT NEW DELHI C.M.(M) No.725/2013 and C.M. Nos.11010/2013 & 13661/2013 29th October, 2014 % SH. PARAS GULATI Through: ..... Petitioner Mr. Atul Ahuja, Advocate. Versus SH. RAM CHANDER Through: ..... Respondent Mr. M. Babar, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India is filed by the plaintiff impugning the order of the trial court dated 15.5.2013 by which the trial court has allowed the application filed by the respondent/defendant under Order IX Rule 13 of Code of Civil Procedure, 1908 (CPC) and has set aside the ex parte decree of possession dated 5.7.2008.

2. The subject suit was a suit for possession filed by the petitioner/plaintiff against the defendant/respondent claiming possession with respect to suit shop no.7, 3159, Bedonpura, Karol Bagh, New Delhi110005. In this suit, the defendant is stated to have been served through the employee/servant of the

respondent/defendant and since the respondent/defendant failed to appear thereafter, the suit was decreed ex parte in term of the judgment dated 5.7.2008.

3. Learned counsel for the petitioner argues before this Court that once there are disputed questions of facts as to whether or not the defendant in the suit was served, then in facts of cases such as the present, before allowing an application under Order IX Rule 13 CPC, issues must be framed and parties must be allowed to lead evidence in order to arrive at a conclusion with respect to whether or not service was effected on the respondent/defendant through his employee/servant i.e whether there was due service upon the respondent /defendant and that he was thereafter rightly proceeded ex parte.

4. As per Order XX CPC, interim applications are decided by means of affidavits, however, an application in the nature of Order IX Rule 13 CPC, is not an interim application which can be decided only on affidavits in all cases. It depends on facts of each case whether the application under Order IX Rule 13 CPC should be decided on the basis of affidavits or in such an application parties should be allowed to lead evidence to prove their respective stands.

5. In the present case, the issue is whether the respondent/defendant was served in the suit through his employee namely Sh. Guddu. Even as per the provisions relied upon by the trial court i.e Order V Rule 14 and Order V Rule 19 CPC, service of a defendant in the suit can be through an agent. I may note that the provisions of Order V Rules 14 and 19 do not use the expression power of attorney holder but the expression which is used is only an agent i.e to be an agent, a person need not be a power of attorney holder to a party to the suit.

6. Since in the present case, there are serious disputed questions of facts as to whether the respondent/defendant was or was not served in the suit through his employee/servant namely Sh. Guddu, this is an aspect which is a disputed question of fact and petitioner/plaintiff will be entitled by leading evidence to show that Sh. Guddu was the employee/servant of the respondent/defendant and therefore the respondent/defendant was duly served in the suit through his agent. Of course, respondent/defendant can also lead counter evidence to show that the respondent/defendant was not served through his agent namely his

employee/servant Sh. Guddu.

7. In view of the above, the impugned order dated 15.5.2013 is set aside and the application under Order IX Rule 13 CPC is remanded for a fresh decision after issues are framed in this application and evidence is allowed to be led by both the parties.

8. Let the parties appear before the District & Sessions Judge, Central, Tis Hazari, Delhi on 27th November, 2014, and the District & Sessions Judge will now mark the application under Order IX Rule 13 CPC filed by the respondent/defendant to a competent court for disposal in accordance with law and the observations made in the present order. Parties are left to bear their own costs. VALMIKI J.

MEHTA, J OCTOBER29 2014 Ne

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