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Court : Madhya Pradesh

Decided On : Dec-26-1958

Reported in : AIR1959MP193

Judge : P.V. Dixit, J.

Acts : Limitation Act, 1908 - Schedule - Article 164; Code of Civil Procedure 1908 - Order 5, Rules 19, 20 and 20(1)

Appeal No. : Civil Revn. No. 622 of 1957

Appellant : Kamlabai

Respondent : Dhula

Advocate for Pet/Ap. : S.M. Kutumbale, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

P.V. Dixit, J.

1. In a suit filed by the petitioner for the recovery of the Rs. 385/- from the opponent, as the defendant could not be served personally, substituted service by the order of the court under Order 5, Rule 20, C.P.C. was made by publishing a

notice in Nai Dunia, a daily Hindi paper published in Indore. The defendant did not appear in the suit in response to the notice. The suit was, therefore, decreed ex parte against him on 26-10-1956. On 12-1-1957, the defendant presented an application for setting aside the ex parta decree on the ground that the summons was not duly served on him and that ha got knowledge of the decree on or about 10-1-1957. The learned Civil Judge, Second Class, Mahidpur, accepted this plea of the defendant and set aside the ex parte decree against him. The plaintiff has now filed this revision petition against the order of the lower Court setting aside the ex parte decree.

2. Mr. Kutumbale, learned Counsel for the petitioner, urged that the defendant was dully served for purposes of Article 164 of the Limitation Act, when substituted service was ordered by the Court under Order 5, Rule 20, C. P. C. and that therefore, the defendant should have filled an application for setting aside the ex parte decree within thirty days from the date of the decree and not from the date of the knowledge of the decree.

Learned Counsel said that there was a conflict of decisions on the point as to whether the substituted service was due service for the purposes of Article 164, where as a matter of fact the defendant was ignorant of the suit. He referred to the decisions noted in Note 5 to Article 164 in Chitale's limitation Act (Vol. 3).

3. The question that arises for consideration in this revision petition is whether it is open to the defendant seeking to set aside a decree passed ex parts against him to show that substituted service in the suit against him was not due service. To me it appears that the answer to the question is clear from the terms of Article 164 of the Limitation Act itself. Under that Article limitation for setting aside an ex parte decree is thirty days from the date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree.

When, therefore, the defendant files an application more than thirty days after the date of the decree saying that he got the knowledge of the decree on a particular date, he has to establish first that the summons was not duly served on him and secondly that the application made by him for setting aside the ex parte decree is within, thirty days of the date on which he got the knowledge o the decree. It is

thus open to him to show, am he must, that the summons which was said to be served on him was not in fact duly served on him.

The phrase 'duly served' in Article 164 is used in the same sense as in Order 5, Rule 19 and 20, C. P. C. Here the rule that is relevant is Rule 20 of Order 5, C.P.C., which deals with substituted service. Under Order 5, Rule 20(1), substituted service can be ordered only where the court is satisfied that the defendant is keeping out of the way, or that for any other reason the summons cannot be served in the ordinary way.

The substituted service has to be effected by affixing a copy of the summons in some conspicuous place in the court house and also upon some conspicuous part of the house in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit. Thus, a defendant can be said to be duly served by substituted service only if there is compliance with Order 5, Rule 20 (1), C.P.C. It follows, therefore, that where a defendant contends that the substituted service on him was not a due service he is entitled to show that it was neither properly ordered nor properly effected.

In other words, he can show that he was not keeping out of the way or that he could be served in the ordinary way or that a copy of the summons was not affixed upon the house where he resided or carried on business or that the other manner in which the court ordered substituted service was not appropriate in the circumstances of the case.

The whole object of issuing summons to the defendant and of serving him personally or by substituted service in the mode indicated in Order 5, Rule 20 (1), C.P.C., is to give the defendant the knowledge of the claim made against him by the plaintiff. When, therefore, the substituted service on the defendant is not effective, that is to say where it does not give the defendant information of the suit filed against him, it cannot be said that the defendant was duly served within the meaning of Order 5, Rule 20 (1). C.P.C. or for the purposes of Article 164 Limitation Act.

The words 'or in such other manner as the Court thinks fit' in Order 5, Rule 20 (1), C.P.C., no doubt give a very wide discretion to the court as regards the mode of substituted service. It may he by notice in a newspaper or by a registered letter or in any other mode the Court may seem just. But whatever method the court adopts of substituted service, it must bring to the knowledge of the defendant the claim against him.

For example a person living abroad can properly be served by registered post. It would be an absurdity to have substituted service against him by putting up a notice in the Court-house or by publishing it in any local newspaper. The question whether in case of substituted service of summons under Order 5, Rule 20 C.P.C., the summons is or is not duly served for purposes of Article 164 Limitation Act, therefore, depends on the facts of each particular case.

Merely because the court had ordered substituted service under Order 5, Rule 20, it cannot be taken that by virtue of Sub-rule (2) of Rule 20 of Order 5, C. P. C., the defendant was duly served for purposes of Article 164 Limitation Act. That sub-rule only says that the service substituted by order of the court shall be as effectual as if it had been made on a defendant personally. This is not a provision debarring a defendant on whom substituted service has been made from showing at any time that the substituted service was not in compliance with Order 5, Rule 20 (1) C. P. C. It only means that the service shall be effectual for the purposes of enabling the court to proceed with the suit.

4. Now, here the substituted service on the defendant non-applicant was effected by the publication of a notice in a newspaper published from Indore. A copy of the summons was not affixed upon some conspicuous part of the house where the defendant resided or personally worked for gain. The defendant resided in Varni. He was working as a labourer on Chambal Dam in Mandsaur District.

Considering the class from which the defendant conies, the work he does and the place wherehe was working as a labourer, it is unreasonable toassume that the defendant is a literate person whoused to subscribe to Nai Duma and read the paperregularly or that the paper had such wide circulation in Chambal Works that the defendant couldhave easily come to know of the claim against himby the

plaintiff from the notice published in NaiDunia.

In my opinion, the lower Court was right in thinking that the substituted service made on the defendant in this case was not due service and that, therefore, the application filed by him for setting aside the ex parte decree on 12-1-1957, that is within two or three days of the date of the knowledge of the decree, was within time. It was not disputed before me that the application made on 12-1-1957 was within thirty days of the date on which the defendant got knowledge of the decree.

5. For these reasons, this petition is dismissed,without any order as to costs.

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