

Hdfc Vs. Anil Laul

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Court : Delhi

Decided On : Feb-15-2000

Reported in : 2000VAD(Delhi)542; 85(2000)DLT343; 2000(56)DRJ226

Judge : S.K. Mahajan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order xxxvII

Appeal No. : IA No. 6719 of 1999 in Suit No. 438 of 1999

Appellant : Hdfc

Respondent : Anil Laul

Judgement :

ORDER

1. The plaintiff had filed this suit for recovery of money under Order 37, CPC. Summons in Form IV Appendix B, CPC were served upon the defendants on May 14, 1999. In terms of Order 37, CPC, the defendant on receipt of summons is required to enter appearance within 10 days from the date of service of summons upon him. As the summons were served upon the defendants on 14th May, 1999 the appearance was required to be entered on or before 24th May, 1999. The defendants however, entered appearance only on 19th July, 1999 and have filed this application for condensation of delay in entering appearance.

2. The case set up by the defendants for condensation of delay in entering appearance is that in the summons itself it was mentioned that the suit will be listed again on July 20, 1999 before the Joint Registrar and because of this date appearing on the summons the defendants were misled and they remained under the impression that they had to enter appearance only on 20th July, 1999 when the matter will be listed before the Joint Registrar of the High Court. It is stated that it was only on or about 10th July, 1999 when representative of the defendants met the Counsel that he was informed that in terms of Order 37 of the Code, the defendants were required to enter appearance within 10 days from the receipt of summons. Thereafter, application was prepared. Vakalatnama was received and the present application filed on 19th July, 1999.

3. Reply to the application has been filed by the plaintiff and all that has been stated is that the defendants were wholly negligent in not pursuing the case diligently and there was no reason as to why the appearance was not entered within 10 days from the date of service of the summons upon the defendants when it was specifically stated on the summons that the appearance was so required to be entered within 10 days.

4. It is correct that under Order 37 of the Code, on receipt of summons in Form IV Appendix B the defendant is required to enter appearance within 10 days from the date of service of summons upon the defendant. But this Court can also not ignore the fact that when summons are received by a layman who has hardly appeared in Court, he can be misled by the date which is mentioned on the summons. A perusal of the summons shows that the party was informed that the matter will be taken up by the Court on 20th July, 1999. No mala fides have been imputed to the defendant nor any reason has been shown as to why the defendant who wants to contest the suit would not enter appearance in case he was aware that on not filing appearance within 10 days decree will be passed against him. At best it can be a case of casual approach of the defendant to the whole matter. However, it cannot be said that the mistake on the part of the defendant in not entering appearance within 10 days was not bona fide. It can also not be said that by writing the date of 20th July, 1999 on the summons when the defendants were informed that the matter will be listed before the Joint Registrar, the defendant was

not misled. In my view, therefore, there is sufficient cause for not entering appearance within time and a good cause has been shown for the delay in entering appearance. I accordingly allow this application subject to payment of Rs.1,000/- as costs and condone the delay in entering appearance by the defendant. No further orders are required to be passed on this application and the same stands disposed of.

Suit No. 439/99

Learned Counsel for the plaintiff states that he will take steps for service of summons for judgment upon the defendant. Renotify on 2nd May, 2000. Matter be listed before the Joint Registrar on the date.

5. Application allowed with costs.

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