

Dolf Leading Ltd. Vs. Vijay Cable Industries and anr.

Dolf Leading Ltd. Vs. Vijay Cable Industries and anr.

SooperKanoon Citation : sooperkanoon.com/702925

Court : Delhi

Decided On : Sep-18-2001

Reported in : 2001(60)DRJ616

Judge : Mr. J.D. Kapoor, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 5 - Rule 15 - Order 37 - Rules 2(3) and 3

Appeal No. : IA No. 7966/2001 and S. No. 2531/2000

Appellant : Dolf Leading Ltd.

Respondent : Vijay Cable Industries and anr.

Advocate for Pet/Ap. : Mr. Shahzad Khan, Adv

Disposition : Suit decreed

Judgement :
ORDER

J.D. Kapoor, J.

1. is 7966/2001 is an application under Order 37 rule 2 sub-rule 3 read with Section 151 CPC for decreeing the suit.

2. This is a suit filed under the summary procedure of Order 37 CPC for recovery of Rs.53,08,359.72/-.
3. A perusal of the report on the summons for entrance issued under the provisions of Order 37 Rule 3 CPC show that the process server made a report dated 23.2.2001 that he reached the addressed place and met a lady, who disclosed herself to be the wife of the proprietor of the plaintiff firm and that the lady told that the proprietor is out of station and refused to take summons. Again the process server went to the premises on 25.4.2001 and reported that he reached the addressed place and met a man who disclosed himself to be son of the proprietor of the plaintiff firm Mr. Vaibhav Bhatia and that the man told that the proprietor is out of station and refused to take summons and on 23.6.2001 a man who disclosed himself to be a servant, found but he too refused to take service. Again on 28.7.2001 wife met and refused to take summons.
4. As per provisions of Order 5 rule 15 which says that where in any suit the defendant is absent from this residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him. It is also mentioned in the Explanation that a servant is not a member of the family within the meaning of this rule. aforesaid reports of the process server raise strong presumption of service.
5. Since this is a suit summary procedure of Order 37 CPC the same has to be decreed in view of the provisions of Order 37 rule 2 sub rule 3 CPC which provide that if the defendant does not enter into appearance within ten days of such service the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree not exceeding the sum mentioned therein together with interest at the rate specified.
6. In view of the aforesaid provisions of law and the finding as to the service of summons of the suit upon the defendant the suit is decreed with pendente lite interest @ 24% till the date of decree.

7. The suit and is are disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com