

**The Central Bank of India Vs. Shri Rane Parkash and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/710470](http://sooperkanoon.com/710470)

**Court :** Delhi

**Decided On :** Oct-28-2005

**Reported in :** 128(2006)DLT537; 2005(85)DRJ557; (2006)143PLR44

**Judge :** Vijender Jain and; Rekha Sharma, JJ.

**Acts :** Code of Civil Procedure (CPC) - Sections 151 - Order 37, Rules 2(2), 3, 3(4), 3(5) and 3(7) - Order 22, Rule 3

**Appeal No. :** FAO(OS) No. 290/2003

**Appellant :** The Central Bank of India

**Respondent :** Shri Rane Parkash and ors.

**Advocate for Def. :** N.N. Aggarwal, Adv.

**Advocate for Pet/Ap. :** Vijay Gupta, Adv

**Disposition :** Petition dismissed

**Judgement :**

**Rekha Sharma, J.**

1. Here is yet another case where a tenant on the grounds untenable, is trying to avoid its liability to pay full rent due for the premises let. The tenant is the Central Bank of India. The landlords are Shri Rane Parkash, Shri Rajiv Prakash and Smt.

Shan Parkash.

2. It so happened that on December 30, 1998, a registered 'Rent Deed' was executed between the parties. With a view to remove any ambiguity and to delineate the premises actually let, a site plan was attached which formed an integral part of the 'Rent Deed'. As per the terms of the 'Rent Deed' the premises let were known as 'Japan Hall' and 'Gujarat Hall'. Admittedly, the monthly rent was agreed to be Rs. 50/- per sq. ft. Since as per the landlords the Bank was in arrears of rent they filed a suit for recovery of Rs. 34,98,130.00 claiming the same to be due. The suit was instituted under Order xxxv II of the Code of Civil Procedure, 1908 and the Bank was sent summons of the same. Upon service of summons the Bank entered appearance on February 15, 2002, i.e., within 10 days of the service and furnished two addresses for further service of summons upon it. One of the addresses given was of the Advocate representing the bank, i.e., Shri R.N.Gupta & Company, 121, Lawyers Chambers, Delhi High Court, New Delhi and the other of the office of the Bank situated at 72, Janpath, New Delhi. Thereafter, the landlords took out summons for judgment under Order xxxv II Rule 3 of the Code of Civil Procedure which was served upon the bank through its Advocate on May, 17 2002 and through its Assistant General Manager at its office on May 18, 2002. Two days thereafter, i.e., on May 20,2002 plaintiff No. 3 in the original suit, namely, Smt. Shan Parkash died. Accordingly, an application under Order XXII Rule 3 read with Section 151 of the Code of Civil Procedure was moved on behalf of other plaintiffs for brining on record her legal representatives. Notice of the said application was served on the Bank but no reply to the same was filed. Hence, vide order dated January 24, 2003, the application was allowed and the legal representatives of deceased plaintiff No. 3 Smt. Shan Parkash were brought on record. It was after more than 10 months of service of 'Summons for Judgment' on the bank that it applied for leave to defend. This was done by filing an affidavit on March 20,2003 Along with an application under Order xxxv II Rule 3 (5) & (7) read with Section 151 of the Code of Civil Procedure for condensation of delay in seeking leave to defend.

3. The learned Single Judge, after hearing the matter, and finding no ground to condone the delay in applying for leave to defend, dismissed the application for

condensation of delay and proceeded to pass a decree in favor of the landlords and against the Bank taking the area of the premises to be as delineated in the site plan. Hence, this appeal.

4. The learned counsel for the Bank has pressed this appeal on three grounds. First, that the summons served upon it were not in accord with the provisions of Order xxxv II of the Code of Civil Procedure, and for that reason, the suit though instituted under Order xxxv II ought not to have been treated as being under the said provision. Secondly, the application seeking condensation of delay ought to have been allowed. And thirdly, that the Bank was liable to pay rent only for that much of the area as mentioned in the 'Rent Deed', and not for the area as shown in the site plan.

5. It is provided in sub-rule (2) Rule 2 of Order xxxv II of the Code of Civil Procedure that when a suit is instituted under the said Order, summons of its institution shall be sent to the defendant in Form No. 4 of Appendix B of the Code of Civil Procedure or in such other Form as may be prescribed from time to time. It is further provided in sub-rule (4) Rule 3 of Order xxxv II that 'Summons for Judgment' shall be sent in Form No. 4A of Appendix B of the Code.

6. Were the summons served in the present case in the prescribed Form ?

7. A peep into the record of the suit would go to show that the summons which were served upon the defendant were in the Form prescribed under Order xxxv II sub-rule (2) Rule 2 and under Order xxxv II Rule 3 sub-rule (4) of the Code of Civil Procedure except that it was not mentioned on top of the same that they were summons in a summary suit. Barring this omission, both the summons were in the prescribed Form. As has been noticed above, the Bank upon service of summons, entered appearance within 10 days of service and gave two addresses for service of further summons on it. This goes to show that the Bank was fully aware of the fact that it was defending a suit under Order xxxv II of the Code of Civil Procedure or else it would not have entered appearance within 10 days of service of summons. Having done so, it is not open to the Bank to contend that it did not apply for leave to defend merely because it was not mentioned on the summons served upon it that they were summons in a summary suit. It was expected and

rather it was the duty of the defendant to read into the summons the contents of the provision of Order xxxv II Rule 3 sub-rule (4) of the Code of Civil Procedure which lay down that the leave to defend should be applied within 10 days of the service of 'Summons for Judgment'. The Bank cannot be allowed to take refuge under a technicality that the summons served upon it did not bear the 'caption' that they were summons in a summary suit. We find no merit in the objection raised and the same is thereforee rejected.

8. The appellant Bank in a bid to cover up its lapse in not applying for leave to defend within 10 days of service of 'Summons for Judgment' contended that one of the plaintiffs, namely, Smt. Shan Parkash, having died the suit could not have proceeded until the legal heirs of the said plaintiff were brought on record. It was thereforee contended that it was under no obligation to apply for leave to defend within the stipulated period of 10 days after service of 'Summons for Judgment'. However, we remain unconvinced.

9. The mere fact that one of the plaintiffs had died and an application for bringing on record her legal representatives was pending could not have absolved the Bank from filing an application for leave to defend within the time prescribed by the Code of Civil Procedure. With the death of one of the plaintiffs the suit did not come to an end. There were two other plaintiffs who were still alive and were competent to continue with the suit. In any case, the said death in no way changed the nature of the suit nor did it enlarge the time for applying for grant of leave. There was thus no basis for the Bank to have formed an impression that it was not required to apply for leave to defend till the legal representatives of the deceased plaintiff were brought on record. In this context there is one more fact which needs to be highlighted and it is the order dated September 6, 2002 passed by the Joint Registrar of this court. This is how it reads:-

'IA No. 7985/02 (Under Order XX!! Rule C CPC on the death of plaintiff No. 3).

Learned counsel for the defendant accepts notice of the IA. Copy supplied. Let reply be filed within a period of two weeks. Rejoinder, if any, be filed within a period of one week thereafter.

S. No. 36/2002

Defendant is served with the summons for judgment on 18th May, 02. Summons for judgment have also been served upon the defendant's counsel on 17th May, 02. Summons for judgment have since been duly served upon the defendant, defendant has failed to file leave to defend and the statutory period of ten days from the date of service of summons has since expired. Matter be placed before the Hon'ble Court for appropriate orders for 22nd October, 2002.'

10. The above order shows that the Bank which was represented by a counsel knew as far as back as on September 6, 2002 that the leave to defend application was to be filed within 10 days of May, 17 2002 or May, 18 2002. inspire of having been specifically made aware of the same the Bank slept over the matter for as long as more than 10 months and applied for leave to defend only on March 20, 2003. The Bank has furnished no justification for such delayed reaction. There is thereforee no reason for us to condone the delay in the Bank applying for leave to defend.

11. This brings us to the question whether the learned Single Judge was justified in decreeing the suit for the area specified in the site plan. The Bank contends that the total area let out is 4725 sq.ft. The site plan belies this stand. As per the site plan the area let was 5275 sq.ft. It bears the signatures of the parties. It was made part of the 'Rent Note' in token of its correctness. Its authenticity is not in dispute. If the learned Single Judge has sworn by it he cannot be faulted.

12. In order to obtain leave to appear and defend a suit instituted under Order xxxv II of the Code of Civil Procedure a defendant has to set up a cogent defense. The principle is as old as the hills. Here, the defense set up is all moonshine. In any case the application for leave to defend was delayed by more than 10 months and as noticed above there is no ground to condone the same. This is what was felt by the learned Single Judge. This is what we also feel. What else remains to be said except that the appeal is without merit. We say so and dismiss the same with costs quantified at Rs. 5,000/-.

