

Sunni Mal Vs. Braham Pakash

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Court : Delhi

Decided On : Apr-30-2013

Judge : Indermeet Kaur

Appellant : Sunni Mal

Respondent : Braham Pakash

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Judgment:30.04.2013 RC.REV. 165/2013 & CM No. 6855/2013 SUNNI MAL Through Petitioner Mr. Vikas Gautam, Adv. versus BRAHM PAKASH Respondent Through Nemo. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1 The petitioner is aggrieved by the orders dated 20.03.2013 and 09.04.2013. Submission is that the petitioner was never served with the process on 29.01.2013 as has been recorded in the order dated 20.03.2013. The summons sent by the registered post had also not been delivered to him as was noted in the endorsement dated 19.01.2013 and 23.01.2013 as has been recorded in the order dated 20.03.2013. The submission of the petitioner is that he had in fact been served only on 05.04.2013 and he had filed his application seeking leave to defend on 18.04.2013 which is within time. 2 The order dated 09.04.2013 shows that the power of attorney had been filed by the petitioner. On the same date, he had moved an application seeking setting aside of the order dated 20.03.2013 with liberty to contest the petition. His submission was that his son had never accepted

the process on 29.01.2013 as has been noted in the earlier order; he has however not disputed the factum that Vinod is his son and the report of the process server had recorded that the summons had been received upon one person by the name of Vinod who had described himself as the son of the petitioner. 3 Be that as it may, on the lengthy arguments addressed by the learned counsel for the petitioner on this score, a specific query has been put to him as to whether till date he has filed his application seeking leave to defend in the trial Court or not. His submission is that the application seeking leave to defend was filed on 18.04.2013. Surprisingly this application seeking leave to defend is not a part of the record of this Court. The matter was taken in the morning session. The counsel for the petitioner had requested for a pass-over in order that he could place the said application on record but in the post lunch hour he has made a statement that he does not have the copy of the application seeking leave to defend although he insists on stating that this application had been filed by him in the trial Court on 18.04.2013. This is not borne out from the record. The application seeking leave to defend was an important document; in fact the entire case of the petitioner is predicated on this document and this not being a part of the court record, it throws a doubt in the mind of the Court whether this document had been filed on 18.04.2013 or not. That apart there are two modes of service vide which the petitioner has been served. This is clear from the order dated 20.03.2013. The ordinary process had been served upon the adult son of the petitioner by the name of Vinod. The fact that his son is also named Vinod has not been disputed. Why and in what background, the process server would give a wrong report or why he would manipulate the report is not answered. That apart the petitioner has been served through a second mode of service. The summons sent through the registered post had come back with the two endorsements dated 19.01.2013 and 23.01.2013 both of which stated that the intimation was delivered. Presumption of service was rightly drawn that the service has been effected. This order was passed on 20.03.2013 and the matter was refixed for 09.04.2013. On that date, as noted supra, instead of filing an application seeking leave to defend, an application seeking leave to contest the proceedings was filed. That application has been dismissed and the matter has now fixed for further proceedings on 02.05.2013. 4 Learned counsel for the petitioner has been advised to address

these submissions which he is arguing before this Court before the trial Court but he insists that a speaking order should be passed on merits. 5 In this background, this Court has no option but to dismiss the petition as the summons having been served upon the petitioner by two different modes and there being no prima-facie proof that the petitioner has been served, leave to defend not having filed, this Court being unsure as to whether the leave to defend has in fact at all been filed or not, the aforementioned impugned order suffers from no infirmity. 6 Petition is without any merit. Dismissed. Stay application also stands disposed of. **INDERMEET KAUR, J.**

APRIL 30 2013 a

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