

PETITIONER:
SHALIMAR ROPE WORKS LTD.

Vs.

RESPONDENT:
ABDUL HUSSAIN H. M. HASAN BHAI RASSIWALA AND ORS.

DATE OF JUDGMENT 07/05/1980

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
SHINGAL, P.N.
TULZAPURKAR, V.D.

CITATION:
1980 AIR 1163 1980 SCR (3) 1028
1980 SCC (3) 595

ACT:

Summons, service of-Suits by or against Corporation-
Service of summons how to be effected to be valid.-Code of
Civil Procedure Code, Order 29 Rule 2, Order 5 Rule 17.

HEADNOTE:

The respondent filed a suit at Indore on 24-2-1975 against the appellant claiming damages to the tune of Rs. 26,000/- on account of the alleged nondelivery of certain goods. Summons in the suit was sent to the registered office of the company in Calcutta and was served on Sri Navalakha on 17-3-1975 asking the company to appear at Indore on 25-3-1975. Since the company did not appear in the Court on that date, eventually, the ex-parte decree was passed on 22-4-1975. The appellant company came to know about the ex-parte decree for the first time when its constituted attorney Sri Jhunjhunwala received a notice from the respondent by registered post demanding the decretal dues. Thereupon Sri N. S. Pareek, the Works Secretary of the company who is in-charge of the legal matters was sent to Indore to ascertain as to how the ex-parte decree came to be passed. Pareek learnt that the summons was purported to have been served on Navalakha on 17-3-75. Navalakha did not bring the fact of the receipt of summons by him to the knowledge of any responsible officer of the company. He was neither secretary nor a Director nor any other principal officer of the company authorised to receive summons in the suit. The company remained in dark and learnt for the first time on 29-7-75 about the passing of the ex-parte decree. The Trial Court allowed the application but the High Court in revision under S. 115 of C.P.C. restored the ex-parte order. Hence the appeal by special leave.

Allowing the appeal, the Court

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HELD: 1. Rule 2 of Order XXIX of C.P.C. is not an exhaustive provision providing for all modes of service on the Company in the sense as to what is meant by service of summons on the Secretary, Director or Principal Officer. Service on managing agents who are a corporation is valid under clause (a) of Rule 2 of Order XXIX C.P.C., since a Principal Officer in clause (a) of Rule 2 has been held to

include managing agents and it can under this rule, be on a juristic person. [1031 D-E]

Jute and Guany Brokers Ltd. & Anr. v. Union of India and Ors. [1961] 3 SCR p. 20; followed.

2. Sending a summons to a corporation by post addressed to it at its registered office may be a good mode of service either by itself, or preferably, by way of an additional mode of service. But leaving the summons at the registered office of the corporation if it is literally interpreted to say that the summons can be left anywhere uncared for in the registered office of the company. then it will lead to anomalous and absurd results. It has to be read in the background of provision contained in Order 5 Rule 17 of the Code. In other

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words, if the serving peon or bailiff is not able to serve the summons on the Secretary or any Director or any other Principal Officer of the Corporation because either he refuses to sign the summons or is not to be found by the serving person even after due diligence then he can leave the summons at the registered office of the company and make a report to that effect. In the instant case nothing of the kind was done. It was also not the case of the respondent in its rejoinder filed in the Miscellaneous case that the service of the summons was effected in accordance with the first part of clause (b) of Rule 2 of Order 29 of the Code. [1032 B-D]

3. Nowhere in the rejoinder a stand was taken by the respondents that the summons was duly served on the company because it was left at the registered office of the company. The company had no knowledge of the ex-parte decree, even otherwise, before 29-7-75. Hence the application under O.I.X Rule 13 of C.P.C. has been correctly allowed. [1033 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 366 of 1979.

Appeal by Special Leave from the Judgment and Order dated 28-2-1978 of the Madhya Pradesh High Court (Indore Bench) in Civil Revision No. 93 of 1976.

Shanker Ghosh and S. K. Gambhir for the Appellant.

R. K. Garg and A. K. Sanghi for Respondent No. 1.

The Judgment of the Court was delivered by

UNTWALIA, J. This appeal by special leave is from the judgment of the Madhya Pradesh High Court reversing the decision of the Second Additional District Judge, Indore in Miscellaneous Judicial Case No. 23 of 1975. The appellant company had filed that case under Order 9 Rule 13 of the Code of Civil Procedure, hereinafter called the Code, for setting aside an ex-parte decree for Rs. 28,479/- passed in favour of the respondent firm on 22-4-1975 against the appellant. The learned Additional District Judge held that summons in the suit was not duly served on the company and it came to know about the decree on 29-7-1975. Hence he set aside the ex-parte decree. The respondent firm filed a revision in the High Court under section 115 of the Code. The High Court allowed the revision, set aside the judgment of the Trial Court and upheld the passing of the ex-parte decree. Hence this appeal.

The respondent filed the suit at Indore on 24-2-1975 against the appellant claiming damages to the tune of Rs. 26,000/- on account of the alleged non-delivery of certain goods. Summons in the suit was sent to the registered office

of the company in Calcutta and is said to have been served on one Shri Navlakha on 17-3-1975 asking the company to appear at Indore on 25-3-1975 for settlement of issues. Since the company did not appear in the Court on that date, eventually,

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the ex-parte decree was passed on 22-4-1975. According to the case of the appellant the company came to know about the ex-parte decree for the first time when its constituted attorney Shri S. K. Jhunjunwala received a notice from the respondent by registered post demanding the decretal dues. Thereupon Shri N. S. Pareek, the Works Secretary of the company who is in-charge of the legal matters was sent to Indore to ascertain as to how the ex-parte decree came to be passed. Pareek learnt that the summons purported to have been served on Navlakha on 17-3-1975. Navlakha was mere Office Assistant in the Sales Department of the company. He was neither a Secretary nor a Director nor any other Principal Officer of the company authorised to receive summons in the suit. He did not bring the fact of the receipt of summons by him to the knowledge of any responsible officer of the company. The company remained in dark and, as stated above, learnt for the first time on 29-7-1975 about the passing of the ex-parte decree.

N. S. Pareek was the only witness examined on behalf of the appellant in the Miscellaneous case tried by the learned Additional District Judge. No witness was examined on behalf of the respondent. The Trial Court held:-

"I hold that handing over of summons to Navlakha who was only an Office Assistant working in the company and who was not an officer duly authorised to accept summons on behalf of the company did not amount to valid service of summons on the applicant company."

It also accepted the appellant's case about the knowledge of the ex-parte decree for the first time on 29-7-1975 and hence the application filed is about a week's time thereafter was held to be within time.

The High Court in its impugned judgment has held:-

"It is not in dispute that the person who received the summons in the office of the Company is not a person who is entitled to be served on behalf of the company in accordance with sub-clause (a) of Rule 2 of Order 29 of C.P.C."

The High Court, however, took the view that since Navlakha was an employee of the company sitting in its registered office in Calcutta the summons will be deemed to have been duly served on the company within the meaning of the first part of clause (b) of Order 29, Rule 2 of the Code. In the opinion of the High Court since the learned Additional District Judge did not apply his mind to the provision of law contained in clause (b), it committed a material irregularity and illegality in exercise of its jurisdiction in setting aside the ex-parte decree.

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In our opinion the High Court was clearly wrong in upsetting the judgment of the Trial Court. There was no error in that judgment much less any error of jurisdiction entitling the High Court to interfere with it.

Order 29 of the Code is headed "Suits by or against Corporations". There are only three Rules in it. We are concerned with Rule 2 which reads as follows:-

"Subject to any statutory provision of process, where the suit is against a corporation, the summons may be served-

- (a) on the secretary, or on any director, or other principal officer of the corporation, or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business."

Rule 2 is not an exhaustive provision providing for all modes of service on the company in the sense as to what is meant by service of summons on the Secretary, Director or Principal Officer in *Jute and Gunny Brokers Ltd. and another v. The Union of India and others* it was held that the words "Principal Officer" in clause (a) of Rule 2 would include managing agents and it can, under this rule, be on a juristic person. Accordingly service on managing agents who are a corporation is valid under clause (a).

The meaning of clause (b) has got to be understood in the background of the provisions of the Code in Order 5 which is meant for issue and service of summons on natural persons. Sending a summons by post to the registered office of the company, unless the contrary is shown, will be presumed to be service on the company itself. But the first part of clause (b) has got to be understood with reference to the other provisions of the Code. In Rule 17 of Order 5 it has been provided:-

"Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain,

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and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed."

Sending summons to a corporation by post addressed to it at its registered office may be a good mode of service either by itself, or preferably, by way of an additional mode of service. But leaving the summons at the registered office of the corporation if it is literally interpreted to say that the summons can be left anywhere uncared for in the registered office of the company, then it will lead to anomalous and absurd results. It has to be read in the background of the provision contained in Order 5 Rule 17 of the Code. In other words, if the serving peon or bailiff is not able to serve the summons on the Secretary or any Director or any other Principal Officer of the Corporation because either he refuses to sign the summons or is not to be found by the serving person even after due diligence then he can leave the summons at the registered office of the company and make a report to that effect. In the instant case nothing of the kind was done. It was not the case of the respondent in its rejoinder filed in the Miscellaneous case that the service of the summons as effected in accordance with the first part of clause (b) of Rule 2 of

Order 29 of the Code. Annexure A to the counter affidavit filed by the respondent is the petition filed by the appellant under Order 9 Rule 13 of the Code. In paragraph 9 of the said petition it was stated:-

"Inspection of record of this Hon'ble Court relating to the service of the summons reveals that the bailiff of the Small Cause Court at Calcutta seems to have delivered a copy of the summons to a gentleman who is described as an office assistant, on 17-3-1975 at about 12.40 P.M. No office assistant of the defendant No. 1 Company is empowered or authorised to receive summons. The original summons which has been returned by the bailiff to this Hon'ble Court, has been signed by one Shri Nawlakha. Shri Nawlakha was concerned merely with sales and had nothing to do with legal matters generally or with receiving summons in particular. Service of the summons on Shri Nawlakha cannot be regarded as due service on the defendant No. 1 for the purpose of Order 9 Rule 13 C.P.C."

The rejoinder of the respondent is Annexure B to the counter affidavit. Para 9 of the rejoinder which is in reply to para 9 of the petition reads as follows:-

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"In reply to para 9 it is stated that the summons was duly served as stated in this para. But it is denied that Shri Nawlakha was concerned merely with sales and has nothing to do with legal matters, generally or with receiving summons in particular. It is denied that service on Shri Nawlakha cannot be regarded as due service on the Company Defendant No. 1 for the purpose of Order 9 Rule 13 C.P.C. Shri Nawlakha was a responsible officer who could have intimated the receipt of the summons to his so called bosses. Without prejudice it is submitted that the Madhya Pradesh amendment in Order 9 Rule 13 C.P.C. may kindly be perused."

No where in the rejoinder a stand was taken that the summons was duly served on the company because it was left at the registered office of the company. Reference to the Madhya Pradesh amendment of Order 9 Rule 13 is immaterial as the Trial Court has pointed out that the company had no knowledge of the ex-parte decree, even otherwise, before 29-7-1975. No contrary finding has been recorded by the High Court.

We, therefore, hold that the judgment by the Trial Court setting aside the decree was correct. In any event no error of jurisdiction was committed by it. The High Court went wrong in interfering with it. We accordingly allow the appeal, set aside the judgment of the High Court and restore that of the Trial Court. The suit shall now proceed to disposal in accordance with the law. We may, however, make it clear that the appellant under the orders of the Court had furnished bank guarantee for the decretal amount. It has agreed to continue the same till the disposal of the suit. We shall make no order as to costs.

S.R. Appeal allowed.

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