

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5879 OF 2008

[Arising out of SLP(C) No.8928/2007]

BALWANT KAUR **... APPELLANT(S)**

:VERSUS:

RAJ KUMAR KAPOOR AND ANR. **... RESPONDENT(S)**

ORDER

Leave granted.

Having heard the learned counsel appearing for the parties, we are of the opinion that the learned Trial Judge as also the High Court had imposed a harsh condition in setting aside the ex-parte decree passed against the appellant herein in so far as a direction for depositing the entire suit amount has been issued.

Indisputably, summons had not been served upon the defendant-appellant. The suit, of course, was filed under Order 37 of the Code of Civil Procedure. The learned Trial Judge, however, did not express any opinion as to how it arrived at the conclusion that the defendant-appellant had no defence at all.

As the defendant-appellant had not filed her written statement, the question

of disclosing her defence at that stage did not arise. The defence of the defendant-appellant, if any, has to be gone into only after the written statement is filed.

We are, therefore, of the opinion that the impugned judgment cannot be sustained in its entirety.

The appellant is hereby directed to deposit 50% of the decretal amount in stead and place of 100%, within four weeks from date.

The appeal is allowed to the aforementioned extent. There shall, however, be no order as to costs.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,
SEPTEMBER 26, 2008.