

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3140 OF 2009

(Arising out of S.L.P. (C) No.11468 of 2007)

Kare

...Appellant(s)

Versus

Brajendra

...Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the appellant.

In spite of service of notice, nobody has entered appearance on behalf of the respondent to contest the prayer made in this appeal.

The respondent filed an application under the Rajasthan Debt Recovery Act for recovery of Rs.15,000/- from the appellant. In the application, the respondent gave the appellant's address at village Abar, tehsil Kumher, District Bharatpur (Rajasthan). Notice was issued to the appellant at the address given in the application but the same was not served, apparently because the appellant was residing in the locality called Shantinagar of village Dhara, tehsil Kumher, District Bharatpur (Rajasthan). On 26.8.2005, the Debt Recovery Court (Civil Judge) ordered ex-parte proceedings against the appellant and finally passed decree dated 16.12.1985 in favour of the respondent for a sum of Rs.16,687.80 payable by the appellant in by-annual installments of Rs.1,500/- each. On coming to know of the

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ex-parte decree, the appellant filed an application for setting aside the same by asserting that he was residing at Shantinagar, village Dhara, for last 10 years and he had not been served with the notice of the application filed by the respondent. By an order dated 26.5.1994, Civil Judge, Bharatpur dismissed the application. Appeal preferred by the appellant was dismissed by Additional District Judge No.1, Bharatpur vide his order dated 24.2.1999 and the High Court upheld that order by observing that the dismissal of the appellant's application for setting aside ex-parte decree does not suffer from any illegality.

A perusal of the record shows that in the application filed by him for setting aside the ex-parte order and decree, the appellant had categorically averred that the address given by the respondent was not correct and the trial Court committed an error by presuming that the notice had been duly served upon the appellant. The factum of mentioning of wrong address was reiterated by the appellant in the memos of appeal and revision filed against the rejection of the application filed by him for setting aside the ex-parte decree. In the memo of petition for special leave to appeal also, the appellant has stated that the address given in the application filed by the respondent was not correct. This has not been controverted by the respondent. Therefore, it must be held that the trial Court, lower appellate Court and High Court committed serious error by refusing to set aside the ex-parte decree passed against the appellant.

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Accordingly, the appeal is allowed, impugned orders and ex-parte decree are set aside and the application filed by the respondent is restored to the file of Debt Recovery Court (Civil Judge) for fresh decision.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
May 01, 2009.

