

(2008) 02 DEL CK 0277

Delhi High Court

Case No: F.A.O. (OS) 17 of 2008 and C.M. No's. 528-29 of 2008

Tulsient Technologies (I) P. Ltd.

APPELLANT

Vs

Modi Care Limited

RESPONDENT

Date of Decision: Feb. 25, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Limitation Act, 1963 - Section 5

Hon'ble Judges: Dr. M.K. Sharma, C.J; Reva Khetrapal, J

Bench: Division Bench

Advocate: Subhash Oberoi, for the Appellant;

Final Decision: Dismissed

Judgement

Mukundakam Sharma, C.J.

This appeal is directed against the order dated 24.10.2007 passed by the learned Single Judge dismissing the application filed by the appellant praying for setting aside the ex parte decree and also the application seeking for condonation of delay.

2. The respondent herein filed a suit for declaration, permanent injunction and mandatory injunction in respect of the Master Licensing Agreement dated 08.10.2002 and the Supplementary Agreement dated 16.01.2003. In the said suit, summons were directed to be issued. The learned Single Judge on going through the records found that the summons had been served on the defendant and held that despite the said service, defendant had not entered appearance and, therefore, the suit would proceed ex parte. Consequent thereto and with the passage of time, an ex parte decree was also passed by the learned Single Judge on 14.09.2006. After expiry of about a year of passing the aforesaid decree, two applications came to be filed by the appellant, one under Order IX Rule 13 of CPC and the other u/s 5 of the Limitation Act, 1963. Both the applications were taken up for consideration by the learned Single Judge. The ground given for setting aside the ex parte decree by the

appellant was that the person who received the aforesaid summons was not authorized on behalf of the appellant to receive the same. The said contention was considered by the learned Single Judge, who on appreciation of records came to the conclusion that the aforesaid ground which is taken is misconceived.

3. Being aggrieved by the aforesaid finding and the reasoning given by the learned Single Judge for dismissing the applications, the present appeal is filed on which we have heard the Learned Counsel appearing for the appellant. Mr. Subhash Oberoi, Advocate appearing for the appellant has submitted before us that Mrs. Sunita Braganza, who received the said notice, had no authority to receive any communication on behalf of the appellant Company and there was one Mr. Shukla, who was receiving the dak for the appellant Company. There is, however, no denial of the fact, rather it is an admitted fact that both the companies, i.e., M/s. Tulsient Information System Pvt. Ltd. and appellant company are located in the same building and that both the companies are sister companies. There is no denial also of the fact that Mrs. Sunita Braganza receives dak on behalf of M/s. Tulsient Technologies (I) Pvt. Ltd. and that he had received the summons in this case and put the seal of the appellant Company.

4. We have considered the records as also the aforesaid summons. It is clearly indicated therefrom that she has received the aforesaid summons on behalf of M/s. Tulsient Technologies (I) Pvt. Ltd., which is the appellant Company. The process server has also stated that all the papers were served on her and she has accepted the same on behalf of the appellant Company. In that view of the matter, the stand taken that she was not authorized to receive any such communication cannot be accepted. Even if there was another person receiving the dak usually that was an internal arrangement between the companies. Both being the sister companies and being housed in the same location, it cannot be said that Mrs. Sunita Braganza had no authority to receive the aforesaid summons. It may also be mentioned that the appellant has never put up a case that the aforesaid seal at any point of time could have been stolen or was stolen or misused by Mrs. Sunita Braganza. That being the position, the contention raised before us cannot be accepted.

5. We find no reason to interfere with the order passed by the learned Single Judge. The appeal has no merit and is dismissed. CM Nos.528-29/2008 also stand disposed of accordingly.