

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 135 of 2017

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

M/s. Muhammad Farooq Textile Mills Ltd. Appellant.

Versus

M/s. Samin Textile Limited. Respondents

Date of hearing : 12.11.2019 and 10.12.2019

Date of judgment: : _____

Appellant M/s. Muhammad Farooq Textile Mills Ltd. through Mr. Mujahid Bhatti, advocate.

Respondent M/s. Samin Textile Limited through Ms. Sofia Saeed, advocate.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- Appellant is a limited company and, by preferring this appeal, has assailed the Judgment pronounced on 03-01-2017 and decree drawn on 21-01-2017 in Summary Suit No. 775/2012. Through the impugned judgment and decree, the aforementioned Suit was decreed against the appellant after the dismissal of their applications for condonation of delay as well as leave to defend the said Suit.

2. The factual matrix of the case is that the respondent (plaintiff of the aforementioned summary Suit) has filed a summary Suit on the basis of negotiable instruments i.e. 14, in numbers, of cheques having accumulated amount of Rs. 1,16,58,014/-. Purportedly, those were post-dated cheques and issued by the appellant (defendant of aforementioned Suit) as deferred payment of certain textile goods. Allegedly, the said

cheques were presented but the same were dishonored under the endorsement of 'insufficient funds'. The respondent has served a legal notice upon the appellant but the same was in vain, and after exhausting every effort for pursuing the appellant for payment of the said amount, the aforementioned Suit was filed.

3. We have heard the arguments advanced by learned counsel for the parties and have gone through the relevant record.

4. After reciting the impugned judgment, Mr. Mujahid Bhatti, Advocate learned counsel for the appellant has argued the matter at length. According to him, the summary Suit was filed in the reticence and the respondent avoided to serve the notices upon the appellant. He submits that although it is shown that the notice was served upon one of the directors of the appellant company at his residence but it is manipulated and in fact, no notice was served upon the appellant. He draws our attention towards the bailiff's report of service and points out that the employee of the director of the company was identified by the bailiffs himself without any proof or satisfaction about his identity. He further submits that no person by name Munib Ahmed is serving at the residence of the director of the company, hence no notice was served upon the company. He submits that the notice was not served on the office address of the appellant company but a fresh address was given, which was shown as the company's office address but the same is a residential house belonging to the Director/CEO of the appellant company. Per counsel, when the service was not properly held, the learned Single Judge has to consider this fact and the application for condonation ought to be allowed and the appellant should be given a chance to address the Court regarding the merits of leave to defend application. He submits that before the learned Single Judge, he had argued only about the condonation application only, as such merits of the leave application were not touched

by him and the appellant was non-suited on the merits also. According to him, it is a fit case of remand and prayed that the matter may be remanded to the learned Single Judge for re-adjudication.

5. Ms. Soofia Saeed, Advocate learned counsel for the respondent opposes the instant appeal by submitting that all the formalities were completed and the learned Single Judge has passed a well-reasoned and a speaking order, which does not require any interference in the appellate jurisdiction of this Court. She further submits that the arguments of the learned counsel for the appellant may bear weight had the impugned judgment an ex-parte judgment. According to her, the appellant has appeared before the Court and has filed an application for leave to defend along with the application for condonation and both these applications were dismissed. She submits that after the dismissal of both these applications, the learned Single Judge was left with no option but to decree the Suit, as such the Suit was rightly decreed. She submits that not only the condonation application filed by the appellant was dismissed but the learned Single Judge has also touched the merits of the case, as such, there is no need to remand the case.

6. It is noted that in the instant case, the very plea of the appellant is that he has addressed the learned Single Judge on the ground of condonation and he has not enjoyed the opportunity of addressing the Court on merits. He has also strongly argued about the deficiency in service and submits that the appellant first time came to know about the pendency of the summary Suit when the counsel for the appellant visited the office of this Court in respect of some miscellaneous work. We have thoroughly examined this aspect of the case and have also gone through the bailiff's report, which indicates that the notice was served upon one Munib Ahmed, an employee of one of the appellant company's director, but the bailiff has not shown the source of identification of such person

and mentioned that he was identified by himself (i.e. bailiff). In the instant matter, the Suit was filed on the office address of the appellant situated in an industrial area. Subsequently, fresh address of the appellant was provided showing that the same is the office address of the company, which is situated in a residential area of DHA, where no business activities are allowed. In these circumstances, the plea taken by the appellant's counsel appears to be coherent. Another aspect of the case is important, under Section 479 (1) of the Companies Ordinance, 1984 (applicable at that time), the procedure of service of summons on a company is given, which reads as under:-

“479. Procedure for the trial of a corporate body.- (1) In any proceedings against a body corporate for an offence against any provisions of this Ordinance a notice to show cause or appear may be sent to or served on the body corporate by registered post or in any other manner laid down for the service of summons issued by a Court under the Code of Civil Procedure, 1908 (Act V of 1908), at its registered office, or if there is no registered office at its principal place of business in Pakistan and where no such office is known to exist or is not functioning, at the address of the chief executive or any director or officer of the body corporate.”

7. As evident from the above, the object of Section 479(1), the summons are required to be served at the registered office and the service on the residence of the CEO can only be affected when there is no registered office of the company. No doubt, if the summons would be served on any of the directors personally, even at his residence, that will be sufficient for holding the service good. We are of the view that if the summons could not be served at the registered office, alternate mode given in the Civil Procedure Code should be followed instead of serving the notice on an unidentifiable person at the residence of one of the directors.

8. The learned counsel for the appellant has strongly agitated that he could not address the learned Single Judge regarding the grounds for

leave as he was asked to argue on condonation application at that time. This contention of the learned counsel is also fortified from the impugned judgment as his arguments mentioned therein are focused on the condonation of delay only. In these circumstances, when the proper service upon the appellant is dubious, we are of the view that the delay in appearing before the Court is to be considered sympathetically. Eventually, we have come to the conclusion that the instant appeal is a fit case for remand, hence the impugned judgment and decree are set-aside and the matter is remanded to the learned Single Judge for giving an opportunity to both the parties to address the Court on the leave to defend application afresh.

With these observations, the instant appeal is allowed.

J U D G E

J U D G E