

M/S SAHARA INDIA AND ORS.

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v.

M.C. AGARWAL HUF

FEBRUARY 21, 2007

[DR. ARIJIT PASAYAT AND DALVEER BHANDARI, JJ.]

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Judgement/Order: Reasoned order—Requirement of—Suit decreed by trial court in spite of non-appearance by defendant—Disposal of appeal by High Court by non-reasoned order and without considering the plea of defendant as to why there was non-appearance—Thus, matter remitted back to trial court for adjudication afresh—Cost imposed on the appellant.

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Suit for possession was filed. The case was adjourned for plaintiff's evidence. Presiding Officer was on leave and the case was again adjourned for plaintiff's evidence. There was no appearance from the defendant's side and the matter was adjourned for final arguments. Suit was decreed. Defendants filed appeal which was dismissed. Hence the present appeal.

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Disposing of the appeal, the Court

HELD: 1.1. High Court has disposed of the First Appeal practically by a non-reasoned order. It did not even consider the plea of the defendants as to why there was non-appearance. Be that as it may, the course adopted by the trial Court appears to be unusual. Therefore, it is proper to remit the matter to the trial Court for fresh adjudication. [Para 8] [1039-B]

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1.2. It is also proper that the appellants should pay cost to the respondent. Even if the reason for non-appearance is accepted to be correct, the plaintiff was certainly prejudiced. Merely because the counsel for the defendants did not take proper care and caution that cannot be a ground to lose sight of the prejudice caused to the plaintiff-respondent. The same has to be meted out by costs which is fixed at Rs.20,000/-. [Para 9] [1039-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 876 of 2007.

From the Judgment and final Order dated 29.9.2004 of the High Court of Delhi at New Delhi in F.A.O. No. 681 of 2003.

A M.L. Verma, K.K. Khurana, Sanjay Pal, Vaibhav Dang and Rajiv Nanda for the Appellants.

Respondent-In-Person through P.K. Aggarwal

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Delhi High Court dismissing the First Appeal No. 681/2003 and upholding the order passed by learned Additional District Judge in Suit No.54 of 2001.

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3. Detailed reference to the factual aspects would be unnecessary except noting the vital aspects.

4. Suit No.54/2001 was filed in the Court of District Judge, Delhi. The same was for possession, recovery of damages and mesne profit and rent @ Rs.70,664/- p.m. i.e. On 26.2.2002 the learned Additional District Judge framed issues and the case was adjourned to 13.5.2002 for the evidence of the plaintiff. On 13.5.2002 the Presiding Officer was on leave and the case was adjourned to 29.5.2002 for the plaintiff's evidence. On 29.5.2002 none appeared for the defendant and the matter was adjourned to be taken up on 31.5.2002 for final arguments and the matter was directed to be placed for orders after lunch. Finally, the suit was decreed. The appeal filed by the defendants was dismissed.

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5. Learned counsel for the appellants submitted that the course adopted by the trial Court has no sanctity in law. The matter was listed on 13.5.2002 for plaintiff's evidence and was subsequently adjourned to 29.5.2002. Even if the defendants were not present the order could have been at the most to set the defendants ex parte and another date should have been fixed. Interestingly, the matter was taken up that very day and a long judgment running into several pages was delivered.

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6. It was submitted that the reason for non-appearance was indicated to be wrong noting of the date by learned counsel appearing for the defendants. The High Court did not discuss any of the pleas and the submissions and by a cryptic order dismissed the appeal.

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7. Learned counsel for the respondent on the other hand submitted that

the appellants have not come with clean hands, and they have given a wrong and distorted picture. A

8. We find that the High Court has disposed of the First Appeal practically by a non-reasoned order. It did not even consider the plea of the defendants as to why there was non-appearance. Be that as it may, the course adopted by the trial Court appears to be unusual. Therefore, we deem it proper to remit the matter to the trial Court for fresh adjudication. Since the matter is pending the trial Court shall dispose of the matter within three months from the date of receipt of our order. B

9. It is also proper that the appellants should pay cost to the respondent. Even if the reason for non-appearance is accepted to be correct, the plaintiff was certainly prejudiced. Merely because the learned counsel appearing for the defendants did not take proper care and caution that cannot be a ground to loose sight of the prejudice caused to the plaintiff-respondent. The same has to be meted out by costs which we fix at Rs.20,000/-. The amount shall be paid within 10 days from today. A receipt shall be filed before the trial Court immediately thereafter so that our directions for disposal within three months can be duly complied with. C D

10. Parties are permitted to place copy of our order before the trial Court so that necessary directions can be issued. E

11. The appeal is disposed of.

N.J.

Appeal disposed of .