

Delhi High Court

Kundanlal Jain vs Municipal Corporation Of Delhi on 21 February, 1984

Equivalent citations: 1984 RLR 255

Author: M Jain

Bench: M Jain

JUDGMENT M.L. Jain, J.

(1) The appellant filed a suit for injunction against the respondent, Mcd restraining them from dispossessing him from certain disputed premises. The suit was decreed by the learned Sub-Judge on 7.11.81. The Corporation filed an appeal. Notice of the appeal was directed to be issued by the Additional Ssj to the respondent. Attempts were made by the Corporation to get the service of the notice affected on the party directly and when the party could not be served, the Corporation filed process fee for notice to counsel but without any specific direction to that effect by the court. The office then issued notice to Mr. S C. Nigam, who was the counsel of the respondent in Court below. Mr. Nigam gave an endorsement on the notice received by him that he has not been engaged in the appeal so far and the party be served with the notice. The learned lower appellate court considered it sufficient service and adjourned the appeal for arguments to 5.1.83. After hearing the arguments the court accepted the appeal on 3.2.83 and set aside the judgment and decree under appeal. The appellant thereafter moved an application u/o 41 R. 21 Civil Procedure Code for rehearing of the appeal. It was Mr. Nigam who moved that application without a fresh power of attorney. The learned S.S.J. held that service on Mr, Nigam was due service as he was a recognised agent and continued to be so until his appointment was duly terminated. He dismissed the application on 23.5.83. Hence, the present appeal.

(2) I have heard the learned counsel for the parties. There is no doubt that according to O. 3 R. 4 (2) Civil Procedure Code appointment of counsel continues during the proceedings of the appeal and it can be terminated only by the leave of the court on a writing signed either by the client or the pleader. No such thing has happened in this case. Mr. Rawal relies upon a judgment of this court reported in Udho Ram vs. Ishwar Datt (1972) 8 Dlt 225, which holds that the endorsement of the pleader on the summons that he has ceased to be respondents's counsel is sufficient information to the court that counsel has withdrawn and that in such a case court should pass an order accepting or rejecting such withdrawal. That apart, O. 3 R. 4 (3) specifically provides that nothing in sub-rule (2) thereof shall be construed as extending as between the pleader and his client the duration for which the pleader is engaged or as authoring service on the pleader of any notice or document issued by any court other than the court for which the pleader was engaged except where such service was expressly agreed to by the client in the document referred to in sub rule (1). Now, in this case, the counsel stated that he has not been engaged in the appeal. It means that the duration of his appointment was up to the lower court and, it therefore, cannot in itself extend to the appeal. The vakalathama was not examined to find out whether the client had expressly agreed that the service of the notice of the appeal on the pleader shall be deemed to be service on the client himself. A pleader is not a recognised agent within meaning of O. 3 R. 2 and 3 unless the power of attorney held by him provides that he can accept service on behalf of the client. That is why the amendment by the Punjab and Haryana High Court in rule 3 specially provided that service on the advocate will be as effectual as on the party. But similar amendment does not seem to have been made by this court.

Moreover, O. 41 R. 21 lays down that the appellate court may rehear the appeal if it is satisfied that the notice was not duly served or that the party was prevented by sufficient cause from appearing when the appeal was called on for hearing. In a case like this where the party was served and the advocate says that he was engaged for the appeal, I will consider it a sufficient cause for the appellant not to be able to appear when the appeal was called for hearing. It is not correct to assume that the act of Mr. Nigam in moving an application u/O. 41 R. 21 Civil Procedure Code shows that he stood engaged for the appeal. Even otherwise, the ends of justice do also require that the party should be heard before any order is passed against it.