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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 653/2022 & CM No.30276/2022, CM No.30277/2022
FLICK STUDIOS PVT. LTD. Petitioner
Through: Mr. Dheeraj Gupta, Adv.

versus

GRAVITY ENTERTAINMENT PVT LTD Respondent
Through: Mr. Abhinav Hansaria, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% 12.07.2022

1. This petition under Article 227 of the Constitution of India assails orders dated 29th December, 2021 and 7th May, 2022, passed by the learned District Judge (Commercial Court) (hereinafter “the learned Commercial Court”) in CS(Comm) 113/2021 (*Flick Studios Pvt. Ltd. v. Gravity Entertainment Pvt. Ltd.*), a summary suit preferred by the petitioner against the respondent under Order XXXVII of the Code of Civil Procedure, 1908 (CPC).

2. By order dated 28th July, 2021, the learned Commercial Court directed issuance of fresh summons to the defendant under Order XXXVII Rule 2(2) of the CPC on filing of process fee by the petitioner. Instead of filing process fee so that fresh summons could be issued, the petitioner preferred to file a review application, seeking review of the said order. The said review application stands dismissed by the learned Commercial Court *vide* order dated 7th May, 2022. Both these orders form the subject matter of challenge in this petition,

preferred under Article 227 of the Constitution of India.

3. Given the nature of the controversy, it is not necessary to enter into the intricacies of the disputes between the parties. Suffice it to state that, consequent on the filing of CS (Comm) 113/2021 by the petitioner under Order XXXVII of the CPC, the learned Commercial Court converted the suit into an ordinary suit *vide* order dated 12th October 2021, holding that a summary suit would not lie on the basis of unsigned invoices. This order was carried, by the petitioner, before this Court by way of CM (M) 1185/2021 (*Flick Studios Pvt. Ltd. v. Gravity Entertainment Pvt. Ltd.*). The said petition was disposed of by a coordinate Single Bench of this Court by order dated 20th December 2021, holding that a summary suit was maintainable on the basis of unsigned invoices. The said order also records thus, in para 8, on which the petitioner seeks to capitalize:

“8. In the present case, the additional factor in favour of the petitioner would be that summons were already issued on 28th July, 2021 on the basis of suit under Order XXXVII of the CPC and despite service, the respondent has failed to enter appearance within the statutory period of ten days.”

4. This Court, therefore, set aside the order dated 12th October, 2021 and directed the learned Commercial Court to treat the petitioner's suit as a summary suit and decide the suit accordingly.

5. The suit was, therefore, again registered as a summary suit under Order XXXVII of the CPC, and *vide* the following order dated 29th December, 2021, fresh summons were directed to be issued to the

respondent under Order XXXVII Rule 2 of the CPC, returnable on 18th April, 2022:

“OMP (I) (Comm) No. 113/21
Flick Studios Pvt. Ltd. Vs. Gravity Entertainment

29.12.2021

Matter has been taken up today pursuant to order No. Judl.II/F.31/South/Saket/2021/23155-23229 dated 18.12.2021 issued by the office of Ld. Principal District & Sessions Judge (South), Saket Courts, New Delhi.

Present: None.

File has been taken up today on receipt of the soft copy of the order dated 20.12.2021 passed by the Hon'ble Delhi High Court in CM(M) No. 1185/2021 whereby the order dated 12.10.2021 has been set aside and the present suit is directed to be treated as a suit U/o 37 CPC. Accordingly, the present suit be registered as a summary suit U/o 37 CPC. The next date given in the matter i.e. 14.02.2022 is hereby cancelled and let the summons of the suit be now issued to the defendant as per Order 37 Rule 2(2) of CPC i.e. in Form No.4 Appendix B on filing of PF and RC, within seven days, returnable for **18.04.2022**.

(Prem Kumar Barthwal)
Vacation Judge/District Judge (Comm)-01
(South)/Saket Courts,
New Delhi/29.12.2021/ak”

6. The petitioner did not file process fee, as directed by the order dated 29th December 2021 so that fresh summons could be issued to the respondent. Instead, the petitioner filed an application seeking review of the order dated 29th December 2021. The petitioner sought to contend that, summons having already been issued to the respondent on 28th July 2021, and the respondent having failed to enter

appearance within 10 days of issuance of summons on the respondent, the inexorable consequence was that all assertions and allegations in the plaint were to be treated as admitted and the petitioner was entitled to a decree in terms thereof.

7. The impugned order dated 7th May 2022 rejects the said review application.

8. Aggrieved, the petitioner has approached this Court under Article 227 of the Constitution of India.

9. The learned Commercial Court has, in the impugned order, noted that (i) as per the report dated 8th September, 2021 of the process server, summons, which were originally issued to the respondent for physical service through the process server attached to the Court could not be served as the, door of the premises of the respondent was found locked since long, (ii) an attempt at service of summons on the respondent by post, too proved abortive, as the summons were received back with the postal endorsement, dated 23rd August, 2021 “left without address”, (iii) despite having filed an amended memo of parties on 4th August 2021, in which the name of the respondent was correctly described as “M/s Gravity Entertainment Pvt. Ltd.”, the petitioner was in default in failing to take any steps to ensure service on the respondent under the said name, (iv) the petitioner’s contention that service of the summons dated 28th July 2021 had duly been effected on the respondent was predicated on a handwritten endorsement “emailed on 18.08.2021”, contained on the body of the

said summons, written in hand towards the head of the summons, (v) no affidavit of service was forthcoming on record, evidencing service of the summons by e-mail to the respondent, (vi) no report, of the process serving agency or of the person who had made the handwritten endorsement towards the head of the summons, reading “emailed on 18.08.2021”, was either filed or placed on record, and (vii) no e-mail ID of the respondent had been provided by the petitioner in the memo of parties filed in the plaint. In these circumstances, the learned Commercial Court was of the view that no case for reviewing its decision to issue fresh summons to the respondent had been made out. The review application of the petitioner was, accordingly, dismissed.

10. Aggrieved, the petitioner has approached this Court under Article 227 of the Constitution of India.

11. I have heard Mr. Dheeraj Gupta, learned Counsel for the petitioner, at some length.

12. Mr. Gupta submits that the learned Commercial Court had fallen into serious error in concluding that the summons dated 28th July 2021 had not been duly served on the respondent. The endorsement “emailed on 18.08.2021”, he submits, had been made by the process server in the process serving agency of the Trial Court. He also faults the learned Commercial Court in its finding that no affidavit of service had been placed on record by the petitioner, and contends that, as service was effected by the process server, affidavit

of service, if any, would have to be placed on record by the process server, and not by the petitioner. He also submits that the learned Commercial Court was in error in observing that no email ID had been filed by the petitioner, as the master data of the respondent company had been placed on record by the petitioner, consequent on directions to the said effect having been issued by the learned Commercial Court, and the master data of the company specifically reflected the email ID gravity.accounts@gmail.com which was also entered in hand on the body of the summons and, therefore, presumably was the email ID on which summons by email had been effected.

13. Mr. Gupta further relies on the order dated 10th July, 2020 passed by the Supreme Court *In Re Cognizance For Extension of Limitation*¹ which, while deciding IA 48461/2020, specifically directed that services of notices could be effected by email, fax and commonly used instant messaging services such as Whatsapp, Telegram, signal etc. Service of summons by e-mail, therefore, was a mode of service to which the Supreme Court had also accorded its imprimatur. Service of the summons dated 28th July, 2021 having been duly effected on the respondent by email, as was apparent from the handwritten endorsement contained on the body of the summons, and the respondent having failed to enter appearance within 10 days thereof, Mr. Gupta submits that the only consequence was that the petitioner would be entitled to a decree in terms of the averments made in the plaint, and that, therefore, the learned Commercial Court seriously erred in its decision to issue fresh summons to the

respondent. He cites, in this context, the judgment of a Division Bench of this Court in *Comba Telecom Ltd. v. S.Tel Pvt. Ltd.*².

14. Having heard Mr. Dheeraj Gupta, and perused the material on record, I am of the opinion that no case, whatsoever, is made out, for this Court to interfere with the impugned order, especially given the restricted parameters of the jurisdiction that Article 227 of the Constitution vests in it.

15. It has been specifically noted by the learned Commercial Court that efforts at physical service of summons, as well as at service by post, were both unsuccessful. It is further observed that, even after amending the memo of parties by correcting the name of the respondent, the petitioner made no effort to ensure service on the basis of the amended memo of parties. I may note that this finding, of the learned Commercial Court has not been traversed by Mr. Dheeraj Gupta during submissions.

16. Apropos the handwritten endorsement “emailed on 18/08/21” at the head of the summons dated 28th July, 2021, on which Mr. Dheeraj Gupta places, special reliance, the learned Commercial Court has not condescended to accept the said endorsement as evidence of the summons having, in fact, been emailed to the respondent at its email ID. The learned Commercial Court observes, in this regard, that there was no report from the process serving agency, evidencing such

¹ *Suo Motu Writ Petition(C) No.3/2020*

² *(2016) 228 DLT 713 (DB)*

service by email.

17. It is also noted, in the impugned order, that no affidavit of service, evidencing service of the summons dated 28th July, 2021 on the defendant through process server had been placed on record by the petitioner. I am not in agreement with Mr. Dheeraj Gupta's submission that this finding was incorrect as the affidavit of service if any, would have to be filed by the process server. The submission is contrary to the basic principle of court practice. When summons are issued by hand through the process server, the process server's responsibility is to submit a report of service. It is the petitioner who is required to place the said report on record under cover of an affidavit of service, and not the process server.

18. Be that as it may, given the fact that (i) physical as well as postal service on the respondent was not possible, (ii) no efforts were made by the petitioner to effect service after amending the memo of parties, and correcting the details of the respondent, (iii) no affidavit of service, evidencing email service of the summons to the respondent, through the process server, was forthcoming, and (iv) no report, of the process serving agency, was on record, the learned Trial Court cannot be faulted in having decided to issue fresh summons to the respondent.

19. Clearly, therefore, there is no substance whatsoever in the petitioner's contention that he was entitled, straightway to a judgment and decree in terms of the assertions contained in the plaint filed by him, on the premise that the assertions were deemed to have been

admitted, no appearance having been entered by the respondent within 10 days of service of summons on it.

20. In fact, *prima facie*, I am of the opinion that this litigation is entirely misconceived and appears, *prima facie*, to be an attempt at securing a decree without granting due opportunity to the respondent to traverse the assertions in the plaint. While Order XXXVII of the CPC, no doubt provides for summary trial of suit in certain specific cases, the manner in which the petitioner desires Order XXXVII to be implemented in the present case, is clearly lacking in bonafides. It appears, *prima facie*, that the petitioner is straining every sinew to ensure that the respondent is unable to meet the assertions contained in the plaint on merits.

21. This petition, therefore, is completely misconceived and is a needless waste of court time. No prejudice whatsoever could be said to have resulted to the petitioner merely because, on 29th December, 2021, fresh summons were directed to be issued to the respondent.

22. In view thereof, this petition is dismissed *in limine*.

C.HARI SHANKAR, J

JULY 12, 2022/kr