

IN THE HIGH COURT OF SINDH KARACHI

SUIT NO. 65 of 2024

Plaintiffs : Spirit Business Enterprises
through M/s. Abdul Ahad and Ammar
Suria, advocates

Defendants : Asad Inam
through Umair Bachani, advocate

Date of hearing : 01-11-2024

Date of Order : 14-11-2024

ORDER

Omar Sial, J: This Summary Suit was filed on 19.01.2024 by Spirit Business Enterprises seeking recovery of Rs. 344,155,772 from Mr. Asad Inam.

2. A summons was issued to Mr. Asad Inam, and the Court record shows that it was served on 31.01.2024.

3. On 29.02.2024, Mr. Asad Inam was directed to file his leave to defend his application by 02.04.2024.

4. The leave to defend application was not filed until 02.04.2024, when the case was put up for orders in Court.

5. The case came up for hearing in Court on 07.05.2024 when the learned counsel for Mr. Asad appeared but sought time for instructions from his client. The case was adjourned to 13.08.2024.

6. An application seeking condonation of delay in seeking leave to appear and defend and the leave to defend application were filed simultaneously on 15.10.2024.

7. I have heard the learned counsels.

8. Article 159 of the Schedule to the Limitation Act, 1908 stipulates that the limitation period for seeking leave to appear and defend a suit under the summary procedure is ten days from the date summons were served.

9. In the current case, the summons was served on 31.01.2024; therefore, the leave to defend application should have been filed by or before 10.02.2024. This was not done. Learned counsel appearing on behalf of Mr. Asad argued (i) the summons was sent to the wrong address and, therefore, the limitation cannot be said to have commenced from 31.01.2024, (ii) the address on the summons was incomplete, (iii) Mr. Asad was out of the country and thus the period he was abroad should be deducted while computing limitation.

10. The Court record shows that a summons was served upon Mr. Asad, and that service was held good. The argument of the summons not being received by Mr. Asad on 31.01.2024 is also misconceived and incorrect. Learned counsel for Spirit Business has put on record copies of Bail Applications filed by Mr. Asad on 18.04.2024 in the Court of the Sessions Judge, Karachi East, that, in themselves, contain specific reference to these two Suits and, in fact, the pendency of these two suits, has been taken as a ground for bail. The factual position is sufficient to show that the leave to defend should have been filed within ten days from 31.01.2024.

11. Learned counsel's argument that the summons was not served as the address was incorrect is not critical, even though the address may have been incomplete, as he has taken the stance that the summons was not received. Speaking hypothetically, even if the summons was not served, the argument regarding not being aware of the Summary Suit fails as it was 07.05.2024 when Mr. Asad's counsel appeared in Court and sought time. Mr. Asad was, by all accounts, aware of the Suit at this stage. He had until 17.05.2024 to file the leave to defend the application, but it was not until 15.10.2024 that it was filed.

12. To fully appreciate the learned counsel's argument that Mr. Asad was not in the country, his counsel was requested to put on record photocopies of Mr. Asad's passport showing the period he was out of the country. No such evidence was

revealed on Mr. Asad. Therefore, the period he remained out of Pakistan will not come to his aid while computing limitations.

13. Mr. Bachani has argued his case well. He has argued every possible permutation and combination and raised every ground under the sun to justify the delay in filing the leave to defend. Unfortunately for him, solid facts of the matter are such that if he were even given a massive benefit of the doubt, he would still be unable to justify the delay. Reasons for the preceding observation are evident from the facts of the case stated above, and keeping in mind the enormous workload of this Court should suffice without elaboration.

14. I have also considered that these are summary proceedings under a separate chapter of the Civil Code. This chapter's spirit will be eroded if its provisions are not strictly complied with.

15. Given the above, the application seeking condonation for the delay in filing the leave to defend is dismissed. Consequently, the application seeking leave to defend itself is also dismissed.

16. The Plaintiff may file his affidavit in ex-parte proof within seven days, together with the list of witnesses and documents. Keeping in mind the backlog of work in this Court, it will be appropriate if a learned Commissioner is appointed to record evidence. Mrs. Moeen Bano Sodher, advocate is appointed as Commissioner. Her fee per witness will be Rs. 35,000, to be paid by the Plaintiff. It is hoped and expected that the learned Commissioner will conclude the exercise within one month and file his report.

17. Adjourned to a date in office.

JUDGE

