

2010 C L D 1529

[Karachi]
Before Faisal Arab, J

KHYBER TEXTILE MILLS LTD. and others---Applicants

Versus

INVESTMENT CORPORATION OF PAKISTAN and others---Respondents

J.M.No.34 of 2008 and C.M.A. No.339 of 2009, decided on 24th February, 2010.

Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---

----Ss. 9,10 & 12---Civil Procedure Code (V of 1908), S.12(2)---Ex parte decree, setting aside of-Service of process on wrong address---Defendant (Company) assailed ex parte decree on the ground that its registered office was at place "H" but notices were served and press publication was made at place "K"---Validity---Notice was not served at the registered office of defendant---Plaintiff was also corresponding with defendant at its registered office at place "H", therefore, notice should have been sent at its registered office at place "H"--Judgment and decree passed ex parte against defendant was set aside---High Court allowed 30 days time to defendant for filing application for leave to defend the suit before Banking Court---Application was allowed in circumstances.

1997 SCMR 926 ref.

Emad ul Hasan for Applicants. S. Wahid Ali for Respondents.

ORDER

FAISAL ARAB, J.---This J.M. under section 12(2), C.P.C. has been filed by applicant/defendant No.1 on the ground that defendant No.1 being a limited company having registered office at Haripur, N.-W.F.P. was not served at such address and notice ought to have been dispatched at its registered office. Learned counsel for the applicant further states that publication was made in a newspaper having circulation only in the Province of Sindh. He also referred to the document issued by the Joint Registrar of Companies which show the registered office of the applicant/defendant No.1 at Haripur, N.-W.F.P. he has also referred Annexure-D to the application, wherein the plaintiff/respondent itself had addressed a letter to the applicant/defendant No.1 at its registered office at Haripur, N.-W.F.P. In support of his contention, learned counsel for the applicant has relied upon 1997 SCMR 926.

Learned counsel for the respondent has contended that the address of the applicant was taken from the loan documents which show Karachi address and loan was also disbursed in Karachi. He next contended that the person who has signed this application has no authority to do so on behalf of the applicant as he has no status in the said company.

In response to the objection of the learned counsel for the respondent, learned counsel for the applicant has stated that Fareed Jadoon, the applicant who has filed the application is Chief Executive of the applicant-Company and this fact is evident from the letter of Joint Stock Companies filed as Annexure C to the main application.

The fact that notice was not served at the registered office of the applicant and the respondents were corresponding with the applicant at its registered office at Haripur N.-W.F.P. notice should have been sent at its registered office at Haripur, N.-W.F.P. In the circumstances the application is allowed. The impugned judgment and decree passed in Suit No.B-05 of 2005 is set aside. The applicants shall file Leave to Defend Application within 30 days from today in the Suit No.B-05 of 2005 and thereafter the suit shall proceed.

M.H./K-26/K Application allowed.

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