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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 29<sup>th</sup> April, 2025*

+ CM(M) 781/2025 & CM APPL. 25383/2025

RAJNISH GUPTA

.....Petitioner

Through: Mr. Anuj Jain, Advocate.

versus

PUNEET SARANG

.....Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. The grievance in the present petition is a very limited one.
2. According to petitioner/plaintiff, a suit under Order XXXVII CPC had been filed before the learned Trial Court.
3. Before any process could be issued, the plaintiff sought amendment in the suit and such amendment was allowed by the Court. Despite such amendment, the suit continued to be summary in nature. However, due to some oversight and inadvertence, summons for settlement of issues were, instead, directed to be issued, as if it was a regular suit.
4. Sh. Anuj Jain, learned counsel for the petitioner/plaintiff, in all fairness, submits that such aspect even missed his attention and he, simply, deposited the process fee, without realizing that direction was to issue summons for settlement of issues. Clearly, the counsel should have been careful and should have drawn the attention of the Court to the above immediately.
5. It seems that though the summons were received back unserved, there



was appearance from the side of defendant through *video conferencing* on 18.11.2024 and defendant was permitted to file written statement within 15 days, subject to cost. Fact remains that no written statement was ever filed by the defendant and it seems there was no appearance from the side of defendant on subsequent dates, even.

6. On 03.02.2025, when the matter was taken up by learned Trial Court, the plaintiff/petitioner prayed for passing of decree under Order VIII Rule 10 CPC and his such request has been turned down by observing that he has to prove that he was not the one who had breached the agreement in question and that he was ready and willing to perform his part.

7. Learned counsel for the petitioner submits that there was never any prayer seeking specific performance and the suit in question was merely a suit for recovery, seeking recovery of Rs.12 lacs with interest.

8. Quite evidently, the petitioner/plaintiff did not point out to the learned Trial Court that the suit was summary in nature and, therefore, summons prescribed for a summary suit were required to be sent. The orders passed by the learned Trial Court, from time to time, do not indicate that the learned Trial Court had, ever, converted the summary suit into a regular suit.

9. None appears on behalf of respondent/defendant despite service of advance notice through e-mail.

10. After hearing arguments for some time, learned counsel for the petitioner submits that he would not press the present petition, provided a liberty is granted to him in this regard to move appropriate application before the learned Trial court so that summons are, eventually, issued in terms of nature of the suit filed by the plaintiff.

11. Needless to say, in case the suit is summary in nature and if the Court



also chooses to adopt the summary procedure, the summons for appearance need to be sent in terms of Form provided at serial No.4 in Appendix B of CPC whereas, in the case in hand, summons have been issued in terms of Form No.2 of Appendix B of CPC.

12. In view of the above, the present petition is disposed of as not pressed with liberty to petitioner to move appropriate application in this regard before the learned Trial Court. If the learned Trial Court comes to the conclusion that the suit was summary in nature and that it was never converted into an ordinary suit, it would be permissible for the learned Trial Court to issue appropriate summons to the defendant/respondent and thereafter to proceed further with the matter in accordance with law.

13. The petition stands disposed of in aforesaid terms.

14. All the pending application also stand disposed of accordingly.

**(MANOJ JAIN)**  
**JUDGE**

**APRIL 29, 2025/st/pb**