



2025:DHC:3865-DB



§~94

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA(COMM) 30/2023

UNION BANK OF INDIAAppellant

Through: Mr. Samarendra Kumar, Adv.

versus

SHASHI MALIKRespondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

%

15.05.2025**C. HARI SHANKAR, J.**

1. This appeal is directed against order dated 20 May 2022 passed by learned District & Sessions Judge (Commercial Court)¹, Shahdara, in CS (COMM) 308/2020², whereby the learned Commercial Court has dismissed suit as having been instituted against a non-existent person and has mulcted the appellant with costs of ₹ 25,000/-.

2. CS (COMM) 308/2020 was instituted by the appellant against one Shashi Malik, proprietor of Shantanu Enterprises.

3. Two residential addresses of the respondent/defendant were provided by the appellant in the memo of parties, viz. (i) 204, Second

¹ "the learned Commercial Court", hereinafter

² **Union Bank of India v Shashi Malik**



Floor, Pankaj Tower, LSC Savita Vihar, Delhi-110092 and (ii) 1714, Sector 12, Sonipat, Haryana-131001.

4. By the suit, the appellant alleged that the respondent Shashi Malik had availed a loan from the appellant of ₹ 9,90,000/- under the Pradhan Mantri Loan Scheme, and had failed to repay the loan. As a result, the appellant had to classify the debt as a non-performing asset.

5. By the suit, therefore, the appellant sought recovery, from the respondent, of ₹ 11,19,609.70 along with *pendente lite* future interest at the rate of 11.85% per annum.

6. Summons in the suit were issued to the respondent. He could not, however, be served. The registered post sent to the respondent at the Savita Vihar address was received back with the report “*no such person*”.

7. The service attempted at the Sonipat address of the respondent was also received back with the report “*no such person at the address*”.

8. These facts are thus noted in para 4 of the impugned order:

“4. Summons of the suit were issued to defendant by all the modes however he remained unserved. The process sent to defendant at his local address i.e. 204, 2nd Floor, Pankaj Tower, LSC, Sarita Vihar, Delhi-92 for 28.02,2021 was received back unserved with report 'no such person'. Process issued at the local address through registered AD post as well as at the 2nd address of Haryana were also received back undelivered with report 'no such person at the address'.”



9. The appellant filed an application before the learned Commercial Court under Order V Rule 20 of the Code of Civil Procedure, 1908³, for permission to effect substituted service.

10. The learned Commercial Court has, in the impugned order, dismissed the said application, observing thus in para 10:

“10. In the instant case, application u/o V Rule 20 CPC is not maintainable as the plaintiff has failed to show that defendant ever resided or personally worked for gain at the addresses mentioned in the memo of parties. The reports of the process server and on the registered AD post at both the addresses of defendant categorically reveal that no such person ever resided at the given addresses, Thus, the application u/o V Rule 20 is dismissed.”

11. Following this, the learned Commercial Court has held that the appellant had “tried to misuse the process of Court to get paper decree against a non-existing person in order to get rid of its responsibility”.

12. The suit has thus been dismissed with cost of ₹ 25,000/- as already noted hereinabove.

13. Aggrieved thereby, the appellant Bank has appealed to this Court.

14. Despite issuance of notice, there is no appearance on behalf of respondent.

15. We have heard Mr. Samarendra Kumar, learned Counsel for the appellant.

³ CPC



16. Mr. Kumar has drawn our attention to various documents which were before the learned Commercial Court and which, according to him, would vouchsafe the existence of the respondent at the addresses provided in the suit. These include the Aadhar Card and Pan Card of the respondent, Rent Agreement dated 29 December 2016, the Credit Information Form, Return Verification Form issued by the Department of Value Added Tax, GNCTD and the Certificate of Import and Export Number of the respondent, also issued by the office of Zonal Director General of Foreign Trade.

17. Mr. Kumar's submission is that all these documents were before the learned Commercial Court and that, therefore, the learned Commercial Court could not possibly have arrived at the finding that the suit has been instituted against a non-existent person.

18. We have considered the submission of Mr. Kumar and perused the record. The documents to which Mr. Kumar has drawn our attention would seem, *prima facie*, to indicate that, at one point of time, the respondent was available at the addresses provided in the plaint. Besides, we find that the ground on which the learned Commercial Court has dismissed the Order V Rule 20 application of the appellant, as contained in para 10 of the impugned order reproduced *supra*, is erroneous on facts.

19. In para 10, the learned Commercial Court has noted that the appellant had failed to show that the respondent had ever resided or personally worked for gain at the addresses mentioned in the memo of



parties.

20. While returning this finding, the learned Commercial Court has not made any reference to the afore-noted documents, which were part of the record before it. Further, the learned Commercial Court has erroneously noted that the report from the postal authorities, as well as the process server, was that “no such person ever resided at the given addresses”.

21. This finding is obviously erroneous on facts. In actual fact, the report did not say that “no such person ever resided at the given addresses” but only “no such person *at the address*”, meaning that the person was not at the address *when attempt was made to effect service*.

22. As the learned Commercial Court has, therefore, rejected the appellant’s application under Order V Rule 20 CPC on erroneous considerations, we set aside the impugned order dated 20 May 2022 and remand the application under Order V Rule 20 CPC to the learned Commercial Court for consideration afresh.

23. We do not express any opinion on whether the appellant would be entitled to effect substituted service. We leave that aspect open for the consideration of the learned Commercial Court, to be decided in accordance with law.

24. Needless to say, further proceedings in the suit would also abide by the decision of the learned Commercial Court on the Order V Rule 20 CPC application of the appellant.



25. In view of the aforesaid, the impugned order is quashed and set aside.

26. CS (COMM) 308/2020 is remanded to the learned Commercial Court to be reconsidered in view of the observations made hereinabove. Needless to say, the learned Commercial Court would not be influenced by any observation contained in the impugned order.

27. A passing observation

27.1 Before closing, we deem it necessary to note a somewhat unsettling “housekeeping” aspect of the matter. The certified copy of the impugned order, as provided by the office of the learned Commercial Court, is defective and is not, in fact, complete. There is lack of continuity between the closing line on one page and opening line on every page of the certified copy. The said copy bears the original signature and stamp of the Examiner in the office of the learned Commercial Court. It is, therefore, the true certified copy of the order.

27.2 This is a serious matter. We are dealing with a fairly minor dispute, but, in a given case, as, for example, an order in a criminal case, such errors could result in serious and possibly irreparable harm to the litigant.

27.3 We request the learned Commercial Court to examine why such a copy was provided to the appellant. In case this was an inadvertent



error, the learned Commercial Court would take steps to ensure that such an error does not occur in future, and caution the concerned officer/employee appropriately. If, however, any responsibility has to be fixed in that regard, the learned Commercial Court is at liberty to do so. We make no further observations, and leave the matter to the judicious discretion of the learned Commercial Court.

28. We clarify that we have made no observations regarding the merits of the suit instituted by the appellant.

29. The appeal stands allowed to the aforesaid extent.

30. In order to expedite matters, we request the learned Commercial Court to take up the case on 28 May 2025, on which date the appellant would remain present and not seek any adjournment.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 15, 2025
an/dsn

[Click here to check corrigendum, if any](#)