



2026:DHC:6630



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010024432020**

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Date of Decision: 05.08.2026

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FAO 44/2021**GOVT. OF NCT OF DELHI THROUGH
CHEIF ENGINEER & ORS.**

.....Appellants

Through: Mr. Lalitaksh Joshi, Ms. Minu
Kumari, Advocates

versus

M/S THE KRISHNA CONSTRUCTION CO. RespondentThrough: Mr. Mukesh Goel and Mr. Purshottam
Kumar, Advocates**CORAM:****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT (ORAL)**

1. The present appeal has been preferred against the order dated 04.03.2020 passed by the learned ADJ-01, Central District, *Tis Hazari* Courts, in M. No. 460/2019, whereby the application filed by the appellants under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree dated 24.08.2018 passed in CS No. 19197/2016 was dismissed.
2. Briefly stated, the respondent/plaintiff was awarded work at *SKV Rampura, Delhi* by the appellants under agreement no. 37/EE/PWD/M-331/2012-13. Upon completion of work, the respondent raised the 5th and final bill. On account of non-payment of the said bill as well as non-release of other contractual dues, the respondent instituted a suit for recovery of

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Rs.62,30,247.56/- along with interest against the appellants before this Court, and the same was registered as CS(OS) No. 50/2015. During the pendency of the suit, owing to a change in pecuniary jurisdiction *vide* notification dated 24.11.2025, the suit was transferred to the Court of learned District Judge, *Tis Hazari* Courts (Central) *vide* order dated 10.02.2016. The said order directed the parties to appear before the learned District Judge on 07.07.2016.

3. However, a perusal of the record reveals that the suit was not listed before the learned District Judge on the said date. The suit was assigned to and received by the transferee Court of learned ADJ-01 (Central), *Tis Hazari* Courts, only on 05.08.2016, on which date the Presiding Officer was away attending a seminar at the Delhi Judicial Academy, and no Court notice was ordered to be issued to the appellants. Thereafter, proceedings continued before the transferee Court in the absence of the appellants, and on 23.08.2017, the appellants were proceeded *ex-parte*.

4. The respondent tendered its evidence thereafter and eventually, *vide* judgment and decree dated 24.08.2018, the suit was decreed *ex-parte* against the appellants for recovery of the amount of Rs.62,30,247.56/- along with *pendente lite* and future simple interest @ 9% per annum.

5. It is the appellants' case that they came to know of the said judgment and decree only on 12.03.2019 when a copy of the same was delivered by the respondent to the Engineer-in-Chief, PWD, who forwarded the same to the Executive Engineer (Education-Project), PWD, along with letter dated 11.03.2019.

6. The appellants filed the subject application under Order IX Rule 13



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read with Section 151 CPC on 06.06.2019 for setting aside the *ex-parte* judgment and decree dated 24.08.2018 as well as the *ex-parte* order dated 23.08.2017. In the application, it was stated that during the pendency of the suit, the appellants' department was completely restructured *vide* office order dated 12.08.2015, Division M-332 was restructured and a new division EE(C)(North West Building) was created, and the concerned Executive Engineer handling the case was also transferred. It was submitted that owing to restructuring and jurisdictional changes, the department lost track of the case upon its transfer from the High Court, and no Court notice was issued to or served upon the appellants after transfer.

7. The learned ADJ dismissed the said application *vide* the impugned order dated 04.03.2020, observing that the order of transfer dated 10.02.2016 was passed in the presence of counsel for the appellants, and when such an order of transfer is passed in the presence of both parties, it is not mandatory to send any Court notice upon receipt of the matter by way of transfer. The Court also held that the subject application was time-barred and that the non-appearance of the appellants was grossly negligent. Aggrieved by the same, the present appeal has been preferred.

8. Learned counsel for the appellants assails the impugned order and contends that the transferee Court erred in proceeding *ex-parte* without issuing fresh Court notice to the appellants, especially since the matter was taken up on a date other than the fixed transfer date. He submits that the High Court had fixed the matter for 07.07.2016, and it was not listed before the transferee Court on the said date. The suit was received by assignment much later on 05.08.2016, and no notice was issued to the appellants.



Reliance is placed upon the decisions of the Supreme Court in Ramgulam alias Sadhu Patel Vs. Bhagwat Prasad Patel¹ and Tala Vs. Satyawan and Another², as well as the decision of this Court in M/s. Voltas Limited Vs. U.O.I. & Ors.³. It is further submitted that under Chapter 13, Volume I of the Delhi High Court Rules & Orders, issuance of notice upon transfer is imperative.

9. Learned counsel for the respondent, on the other hand, supports the impugned order and submits that the transfer order dated 10.02.2016 was passed in the presence of proxy counsel for the appellants, giving them knowledge of the transfer to the Court of the learned District Judge on 07.07.2016. Relying upon Rohtas Singh & Anr. Vs. Bhateri Devi & Ors.⁴, it is submitted that a diligent litigant is bound to make inquiries if a suit is not listed on a particular date, and cannot claim an inherent right to receive fresh Court notice. It is further submitted that the application under Order IX Rule 13 CPC was time-barred as letters had been written to the appellants after passing of the decree.

10. I have heard the learned counsels for the parties and examined the material placed on record.

11. A perusal of the record shows that the suit was not listed before the Court of the learned District Judge, *Tis Hazari* Courts (Central) on 07.07.2016, as directed by the order of transfer dated 10.02.2016 passed by the learned Joint Registrar (Judicial) of this Court. The order sheet dated

¹ (2020) 19 SCC 510

² (2004) 13 SCC 18

³ 2014 SCC OnLine Del 1805

⁴ 2014 SCC OnLine Del 1020



05.08.2016 before the District Court records that the suit was received by assignment on transfer from this Court on 05.08.2016, on which date it was adjourned to 16.08.2016 without ordering Court notice to the appellants.

12. The primary issue for consideration is whether the transferee Court could have proceeded *ex-parte* against the appellants without issuing Court notice when the matter was not listed on the date fixed by the transferor Court, i.e. 07.07.2016, and was taken up on a subsequent unnotified date, i.e. 05.08.2016.

13. A gainful reference in this regard may be made to the decision of the Supreme Court in Ramgulam (*supra*), the relevant extract of which is reproduced hereunder:

“6. It is not in dispute that the Court of Ind Civil Judge, Class I, Jabalpur to whom the suit was transferred did not issue notice to the appellant and on that account he could not appear before the transferee court. Therefore, there is no escape from the conclusion that the ex parte decree passed against the appellant was nullity. As a sequel to this, it must be held that the trial court committed serious error by refusing to set aside the ex parte decree on the ground that the application under Order 9 Rule 13 CPC was filed after expiry of the period of limitation. ...”

14. Another gainful reference may be made to the decision in Rahul Dubey Vs. Vibha Dubey⁵, wherein the Coordinate Bench of this Court emphasized the mandatory requirement of issuing notice upon transfer, specifically referencing Chapter 13, Volume I of the Delhi High Court Rules & Orders. The relevant findings are reproduced hereunder:

“12. ... The rules of natural justice mandate that the party should be put to notice after the case has been transferred from one court to the other. What could have been more fatal to the respondent wife to seek transfer of the case at Delhi Court and then not be able to appear due to the injudicious approach of the learned trial court.

⁵ 2011 SCC OnLine Del 5586



Once the Supreme court has allowed the transfer petition, the transferee court should have put the parties to notice as the rules of fair play and natural justice demand. ...”

15. The abovementioned decision of this Court was upheld by the Supreme Court in Rahul Dubey Vs. Vibha Dubey⁶, observing as under:

“9. In our opinion, the proposition laid down in the judgment relied upon by the learned Senior Counsel has no application to the case in hand because it is an admitted fact that the trial court, to which the case was transferred had taken up the matter on 10-5-2005 i.e. two days before the date allegedly notified by the court at Ghaziabad, did not ensure compliance with the order dated 10-5-2005 and decided the divorce petition by ex parte judgment. The failure of the trial court to issue summons to the respondent was an illegality of the gravest nature and the court concerned did not commit any error by setting aside the ex parte decree.”

16. In Tala Vs. Satyawalan (*supra*) also, the Supreme Court set aside an *ex-parte* decree passed by a transferee Court where the suit was transferred on account of pecuniary jurisdiction and no notice was issued by the transferee Court to the defendant.

17. In Voltas Limited (*supra*), this Court was seized of a dispute wherein, upon a transfer of the suit on account of a change in pecuniary jurisdiction, the matter was taken up on an unnotified date without issuing fresh Court notice, and this Court held that the resulting *ex-parte* judgment was rightly set aside.

18. The judgment in Rohtas Singh (*supra*) relied upon by the respondent is distinguishable on facts. In the said case, the suit was not listed on 23.04.2001 and was taken up merely 3 days later on 26.04.2001, after both parties had already led evidence, leading the Court to hold that the defendants were deliberately avoiding appearance. In stark contrast, the suit



herein was not listed on 07.07.2016 and was taken up by the transferee Court nearly a month later on 05.08.2016 without issuing fresh Court notice. Furthermore, the appellant has explained that the relevant department, i.e. PWD, was undergoing major administrative restructuring during the relevant period.

19. On the question of limitation, since the transferee Court failed to issue notice upon taking up the matter on an unnotified date, i.e. 05.08.2016, the *ex-parte* proceedings suffered from a fundamental procedural defect. Under Article 123 of the Limitation Act, 1963, where notice is not duly served, limitation of 30 days runs from the date of knowledge of the decree. The appellants stated that knowledge was acquired on 12.03.2019, and the application filed on 06.06.2019 was explained owing to administrative upheaval across the relevant government department. Learned ADJ erred in calculating limitation strictly from the date of the decree.

20. Now, considering the law laid down in Ramgulam (*supra*) and Rahul Dubey (*supra*), among others, this Court is of the considered opinion that the appellants have shown sufficient cause under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree.

21. Accordingly, the present appeal is allowed and the impugned order dated 04.03.2020 as well as the *ex-parte* judgment and decree dated 24.08.2018 are set aside. The suit is restored to its original number.

22. The parties shall appear before the learned Principal District & Sessions Judge (Central), *Tis Hazari* Courts at the first instance on 31.08.2026 for further directions.

⁶ (2012) 11 SCC 748



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23. A copy of this order be sent to the learned Principal District & Sessions Judge (Central), *Tis Hazari* Courts for necessary information and compliance.

(MANOJ KUMAR OHRI)
JUDGE

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