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

CNR No. DLHC010334552023

+ **FAO 218/2023 & CM APPL. 43987/2023**

ASHOK KUMAR YADAV ALIAS ASHOK LALA.....Appellant

Through: Mr. Ravin Rao, Mr. Pallav Gupta, Mr.
Akshit Sawal, Ms. Jannat Garg, Mr.
Ayan Sharma and Ms. Anushri,
Advocates.

versus

UMESH KUMAR MISHRA AND ANR Respondent

Through: Mr. Pankaj Tripathi, Advocate for
respondent no. 1

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.08.2026

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1. The present appeal has been preferred by the appellant seeking setting aside of the order dated 21.07.2023 and the *ex-parte* order/decreed dated 25.09.2013. Vide the latter order, the appellant was proceeded *ex parte* and the *ex-parte* order/decreed was passed against him, whereas vide the former order, his application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC), seeking setting aside of the said *ex-parte* order/decreed, was dismissed.

2. Concededly, the appellant has not complied with Section 30(1) of the Employee's Compensation Act, 1923 (EC Act), which mandates deposit of the amount payable under the order appealed against at the time of filing of



the appeal. The appeal has remained pending for the last three years without the said amount being deposited either before this Court or before the learned Commissioner. Despite repeated objections being raised on several dates and sufficient opportunity having been afforded to the appellant to comply with the said requirement, the appellant has failed to do so. The appeal fails on this short ground. However, to test the bona fides of the appellant, this Court has also heard the arguments on the merits of the appeal.

3. Briefly, the respondent/workman had approached the learned Commissioner with the claim application wherein it was stated that late Sh. Akhilesh Kumar Mishra was engaged for laying iron rods for reinforcement on the roof of the Dharamshala and that his last drawn salary was Rs.4,600/- On 18.01.2006, while the construction of the Dharamshala at *Prachin Shiv Mandir, Village Sameypur, Delhi*, was in progress, the newly constructed lintel of the Dharamshala collapsed, falling upon the deceased and resulting in his death. Though he was taken to the hospital, he was declared brought dead.

4. Summons in the claim application were issued to the appellant on 09.01.2007, whereupon the report of the process server recorded that the appellant could not be found at the given address. In respect of the second summons dated 29.03.2007, the report recorded that the priest of the temple had refused to accept the summons. The appellant was thereafter proceeded *ex parte* on 29.08.2007. However, the *ex-parte* proceedings were subsequently set aside on 09.12.2010 and notice was directed to be issued to the appellant at his changed address. The appellant was again proceeded *ex parte* on 28.04.2011, and the matter thereafter culminated in the *ex-parte*



order/decreed dated 25.09.2013.

5. Mr. Rao, learned counsel appearing for the appellant, submits that after the appellant was proceeded *ex parte*, the respondent had also filed an application seeking to bring on record the appellant's fresh address. Fresh summons were thereafter issued, however, the service was again effected at the earlier address. He, thus, submits that the appellant cannot be fastened with the liability to pay compensation when he was not served at his correct address.

6. Learned counsel appearing for the respondent, on the other hand, submits that the appellant was very much available at the earlier address and that, by way of abundant caution, the additional address was furnished in the application.

7. This Court has perused the records summoned from the learned Commissioner. The reports on the two summons would show that while the first summons could not be served, the subsequent report of the process server records that the summons were refused to be accepted. While the appellant seeks to draw benefit from the subsequent application filed by the respondent before the learned Commissioner, whereby an additional address was sought to be placed on record, in his application under Order IX Rule 13 CPC, the appellant has stated that he gained knowledge of the *ex-parte* decree only when the recovery certificate was received by him. Significantly, the recovery certificate bears the same address which the appellant now disputes. The recovery proceedings were initiated on the basis of the order dated 25.09.2013, and the recovery letter dated 11.11.2019 records the appellant's address as “*Head of Prachin Shiv Mandir and Dharamsala, Railway Road, Sameypur, Delhi*”.



8. Thus, the very edifice of the application under Order IX Rule 13 CPC seeking setting aside of the *ex-parte* order/decreed, falls.
9. Consequently, the appeal, being devoid of merit, is dismissed.

MANOJ KUMAR OHRI, J

AUGUST 18, 2026

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