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

CS(OS) 1965/2009

MANISH SETHI & ANR. Plaintiffs
Through: Mr. Mohit Chaudhary and Mr. Kunal Sachdeva, Advs.

Versus

SALIMUDDIN & ANR Defendants
Through: Mr. Shahid Azad and Ms. Meenu Sharma, Advs. for D-2.

AND

+ CS(OS) 3434/2012
SHER SINGH Plaintiff
Through: Mr. Mohit Chaudhary and Mr. Kunal Sachdeva, Advs.

Versus

MANISH SETHI & ORS Defendants
Through: Mr. Shahid Azad and Ms. Meenu Sharma, Advs. for D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.04.2017**

IAs No.16033/2016 & 16034/2016 in CS(OS) No.1965/2009 (of D-1 Salimuddin u/O IX R-13 CPC and for condonation of 414 days delay in applying therefor)

1. These applications came up before the Court first on 22nd December, 2016 when notice thereof was issued.
2. No reply has been filed by the plaintiffs, though the counsel for the plaintiffs appears. The counsel for the plaintiffs states that the application be heard without reply.

3. The applications seek the relief of setting aside of the *ex-parte* order and decree dated 23rd September, 2015 and condonation of 414 days delay in applying therefor.
4. However, a perusal of the applications does not show any ground for setting aside of the *ex-parte* order and decree to have been pleaded and only pleas on merits of the dispute subject matter of suit have been made.
5. The stage for considering the pleas on merits would arise only after the *ex-parte* order and decree is set aside.
6. In fact, it appears that the applications have been filed without even inspecting the suit file.
7. Besides the applicant/defendant No.1 Salimuddin, Sher Singh, The S.D.M. Seelampur, Station House Officer, Police Station-Karawal Nagar, Delhi and Station House Officer, Police Station-Golakpuri, Delhi were impleaded as defendants No. 2 to 5 to the suit.
8. Summons of the suit were ordered to be issued on 21st October, 2009 and the noting of the Court Master on the said order sheet is to the effect that all the defendants had been served. The subsequent order dated 11th March, 2010 also records that the summons issued to the defendant No.1 Salimuddin had been received back served but none had appeared for the defendant No.1 Salimuddin till then. The subsequent order dated 21st April, 2010 also records the said fact. Ultimately the order dated 8th December, 2010 proceeds *ex-parte* against the defendant No.1 Salimuddin. Finally, the suit was disposed of along with CS(OS) No.3434/2012 vide order dated 23rd September, 2015.

9. Finding no plea in the applications disputing service of the applicant/defendant No.1 Salimuddin with the summons of the suit, it has been enquired so from the counsel for the applicant/defendant No.1 Salimuddin.

10. The counsel for the applicant/defendant No.1 Salimuddin fairly admits that he has not pleaded that the applicant/defendant No.1 Salimuddin was not served with summons of the suit. He however makes contentions on the merits of the dispute.

11. As aforesaid, once the suit has been disposed of and a decree has been passed, the question of hearing the applicant/defendant No.1 Salimuddin would arise only after the decree, insofar as *ex-parte* against the applicant/defendant No.1 Salimuddin, is set aside. The applicant/defendant No.1 Salimuddin having not fulfilled the basic ingredients for having the *ex-parte* decree set aside, the question of consideration of the applications any further does not arise.

12. Dismissed.

IAs No.15716/2016 & 15717/2016 in CS(OS) No.3434/2012 (of D-4 Salimuddin u/O IX R-13 CPC and for condonation of 414 days delay in applying therefor)

13. The counsel for the applicant/defendant No.4 Salimuddin states that the position in these applications is the same, as aforesaid.

14. Dismissed.

RAJIV SAHAI ENDLAW, J.

APRIL 18, 2017

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