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

+ **FAO(OS) (COMM) 233/2019**

SHAIN KUMAR Appellant

Through: Mr. N.K. Kantawaka and
Mr. Satyender Chahar, Advocates.

versus

VAISHNAVI BUILDING SOLUTIONS PVT LTD Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **20.09.2019**

C.M. No. 42189/2019 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The Appellant has preferred the present appeal to assail the order dated 09.08.2019, dismissing his application under Order 9 Rule 13 CPC to seek recall/setting aside the judgment dated 15.11.2018 passed in CS (COMM) 863/2018 whereby the said suit was decreed. The ground for seeking setting aside the said decree as stated by the Appellant/Defendant in his application is that he could not participate in the suit proceedings and could not file his written statement due to ill health. He stated that he is suffering from dementia for a long time because of which he tends to forget things. He did

not pursue the suit for the reason that he could not remember the dates of hearing before the Court. He also forgot to share the information with regard to the suit with his family members and failed to file the written statement. The Appellant was working as Sub Staff at Kendriya Vidyalaya, Airforce Station, Gurgaon and sought voluntary retirement on account of his illness. The learned Single Judge takes note of the relevant dates in the suit. The Appellant/Defendant was served with the summons, as noticed in the order dated 23.07.2018 passed by the learned Joint Registrar and time for filing the written statement was granted but not filed. On 10.10.2018, the matter was directed to place before the Court for directions. On 15.11.2018, the Court noted that the Plaintiff had paid sum of Rs. 54,55,052/- by way of bankers cheque drawn in favour of the Defendant as earnest money pursuant to the agreement to sell dated 08.04.2013. Since no written statement has been filed, the Court invoked the Order 8 Rule 10 CPC and passed a decree in favour of Plaintiff for Rs. 54,55,052/- along with simple interest @ 10% per annum (wrongly typed in the impugned order as “per month”). The case of the Appellant was that he had sought voluntary retirement on account of his poor, mental and physical health. He had remained on leave prior to his voluntary retirement, for approximately 910 days due to poor mental and physical health. The Appellant also placed reliance on a medical prescription issued on the letter head of Deepam Hospital which is a private hospital registered with Government of Delhi and is a Government recognized MTP Centre. The learned Single Judge has examined the said document carefully, it nowhere suggest that the Appellant was suffering from dementia. Merely because CT scan of the head was advised, does not follow that the Appellant was suffering from dementia. In fact, the said

document shows that the Appellant was chronic alcoholic. That possibly explains his poor physical and mental health. Pertinently, the said document does not bear a clear date, it only mentioned “2/3”. It does not indicate the year to which it pertains. The name of the doctor who examined the Appellant is also not indicated in the said document. The submission of learned counsel for the Appellant is that the learned Single Judge has failed to adopt the correct approach while dealing with an application under Order 9 Rule 13. He submits that the learned Single Judge has taken note of ***G.P. Srivastava v. R.K. Raizada & Ors*, 2000 (3) SCC 54** but has not applied the said decision in the present case. He submits that a liberal approach should have been adopted while construing the expression “sufficient cause” for non appearance of the Defendant. He submits that the ex-parte judgment passed against the Appellant should have been set aside subject to terms to compensate the Plaintiff/Respondent.

4. Having perused the record and heard learned counsel for the Appellant, we do not find any merit in the present appeal and impugned order does not call for interference. The learned Single Judge has examined the “sufficient cause” disclosed by the Appellant that appears vague and not creditworthy. The excuse/sufficient cause disclosed by the Appellant is also not borne out from the documents sought to be relied upon by him. If Appellant was indeed suffering from dementia, there would be medical record to support the same. It is not even clear as to which period the medical document relied upon by the Appellant relates to. It does not even remotely suggest that the Appellant was suffering from dementia.

5. For the aforesaid reasons, we find no merit in the present appeal and the same is dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 20, 2019

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