

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

+ **C.R.P. 1/2023**

Date of Decision: 06.01.2023

IN THE MATTER OF:

SH. LAXMI KANT SHARMA & ANR. Petitioners
Through: Mr. Digvijay Singh Jaswal and Mr.
Yash Thakur, Advocates.

versus

SMT. KELA DEVI @ KAILASHI DEVI Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

The matter has been received on transfer by way of Supplementary Cause List.

CM.APPL. Nos. 439-440/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

C.R.P. 1/2023 and CM.APPL. No. 438/2023 (Stay)

1. By way of present civil revision petition filed under Section 115 read with Section 151 CPC, the petitioners (appellants therein) have assailed the order dated 05.12.2022 passed by the learned ADJ-11 (Central District), Tis Hazari Courts, Delhi in RCA No. 69/2022 whereby their challenge to the

order dated 21.04.2022 passed by the learned Civil Judge, was dismissed. The petitioners have also sought setting aside of the order dated 21.04.2022.

2. For the sake of felicity, brief facts, as noted in the impugned order, are that the respondent had preferred a civil suit seeking relief of permanent and mandatory injunction against the present petitioners who are statedly her son and daughter-in-law respectively. Summons of the suit were duly served on the present petitioners on 06.07.2017, whereafter, they admittedly engaged a Counsel to defend their case and represent them. The said Counsel appeared on 15.07.2017 and the case was adjourned for 11.09.2017. On the said date, the petitioners remained unrepresented and the case was renotified for 25.10.2017. Since the petitioners remained unrepresented even on the next date of hearing i.e., 25.10.2017, the matter was posted to 11.12.2017 subject to payment of costs of Rs.1,500/-. The petitioners engaged a new Counsel who filed written statement on 11.12.2017 which was beyond the permissible time and not accompanied by an application seeking condonation of delay. Thereafter, neither any Counsel appeared nor any steps were taken to bring on record the written statement filed on behalf of the petitioners. On 01.08.2018, the petitioners' defence was struck off and they were proceeded *ex-parte*. The matter was directed to be listed on 24.02.2018 when again the petitioners' Counsel preferred not to appear and the matter was next directed to be listed on 08.05.2018. The matter could not be taken up on 08.05.2018 on account of lawyer's strike and the matter was listed on 01.08.2018. Again, on 01.08.2018, the petitioners remained unrepresented and the matter was adjourned for 18.09.2018. Thereafter, the matter was adjourned on several dates. On 02.07.2019, the Counsel for the petitioners appeared and prayed that the matter be sent to *Lok Adalat* to

explore the possibility of an amicable settlement. Albeit, the matter was listed before the *Lok Adalat* on 13.07.2019, however the same could not be settled and the file was sent back to the Court. The matter was again listed before the Trial Court on 29.07.2019 and 07.08.2019 when the Counsel for the petitioners sought further time to explore the possibility of settlement, however the same could not be arrived at between the parties. On 19.08.2019, an application under Order IX Rule 7 CPC came to be filed on behalf of the petitioners. By order of the same date, the said application was dismissed and the matter was directed to be listed on 04.09.2019. On 04.09.2019 also, the petitioners remained unrepresented and the matter was adjourned to 23.10.2019.

A perusal of the record would show that evidence of respondent/plaintiff was recorded and the Trial Court after noting the continued absence of the petitioners closed their right of cross-examination on 23.10.2019. Eventually, on 31.10.2019 after considering the evidence on record, an *ex-parte* judgment/decree was passed against the petitioners.

3. Subsequent thereto, the petitioners preferred an application under Order IX Rule 13 CPC seeking setting aside of the *ex-parte* judgment/decree dated 31.10.2019. However, the same came to be dismissed in default on 30.10.2021. Later, another application under Order IX Rule 13 CPC read with 151 CPC was filed on behalf of the petitioners on 03.01.2022, *inter alia*, seeking setting aside of the *ex-parte* judgment/decree dated 31.10.2019 as well as order(s) dated 18.09.2018, 23.10.2019 and 31.10.2019, which came to be dismissed vide the impugned order dated 21.04.2022.

4. The only contention raised by learned counsel appearing for the petitioners is that the Counsel(s) engaged by the petitioners were negligent

and did not inform them about the dates of hearing. In addition, it is submitted that petitioner No. 1 has been suffering from various ailments for which reason he could not look after their case.

5. I have heard learned counsel for the petitioners and have also gone through the entire material placed on record.

6. The application under Order IX Rule 13 CPC is to be premised on the ground that:

- (i) The summons were not duly served or;
- (ii) The person who was served was prevented by sufficient cause from appearing in the suit when the suit was called for hearing.

7. The petitioners have premised their case on a submission that after being summoned, they were prevented by *sufficient cause* from appearing in the suit when it came up for hearing. While underlining the availability of remedies to defendants such as those in the present case, the Supreme Court in Bhivchandra Shankar More v. Balu Gangaram More and Others reported as **(2019) 6 SCC 387** has held as under:-

“11. It is to be pointed out that the scope of Order 9 Rule 13 CPC and Section 96(2) CPC are entirely different. In an application filed under Order 9 Rule 13 CPC, the Court has to see whether the summons were duly served or not or whether the defendant was prevented by any “sufficient cause” from appearing when the suit was called for hearing. If the Court is satisfied that the defendant was not duly served or that he was prevented for “sufficient cause”, the court may set aside the ex parte decree and restore the suit to its original position. In terms of Section 96(2) CPC, the appeal lies from an original decree passed ex parte. In the regular appeal filed under Section 96(2) CPC, the appellate court has wide jurisdiction to go into the merits of the decree. The scope of enquiry under two provisions is entirely different. Merely because the defendant

pursued the remedy under Order 9 Rule 13 CPC, it does not prohibit the defendant from filing the appeal if his application under Order 9 Rule 13 CPC is dismissed.”

8. The expression ‘*was prevented by any sufficient cause from appearing*’ as mentioned in Order IX Rule 13 CPC has to be construed in the facts and circumstances of each case. Indeed, it has to be construed liberally, especially if the explanation offered is justifiable. In this regard, the Supreme Court in Bhivchandra Shankar More (Supra) has opined that the term *sufficient cause* should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of *bonafide* on the part of the appellant.

9. To similar extent are the observations in G.P. Srivastava v. R.K. Raizada and Others reported as **(2000) 3 SCC 54**.

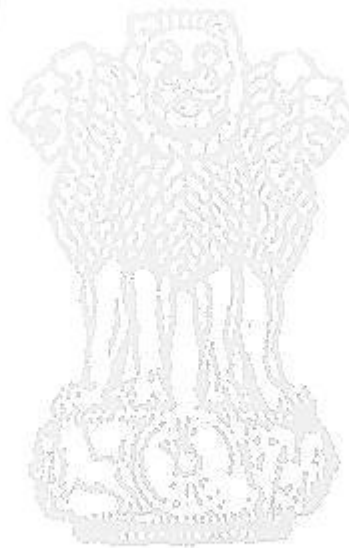
10. Adverting to the facts of the instant case, it is seen that the petitioners have been negligent in pursuing their case right from its inception after they were served. Concededly, summons on the petitioners was served on 06.07.2017. The *ex-parte* order was challenged after a delay of more than one year. It is borne out from the record that though the petitioners have themselves appeared on various date(s) but have blamed their Counsel for not taking steps/non-appearance. The petitioners have not been diligent in pursuing their case and as many as three Counsel(s) have been changed whose conduct is doubted upon. In this regard, no complaints have ever been addressed by the petitioners to the Bar Council of Delhi. Considering the record of proceedings noted above and the relation between the parties, it is apparent that the contention raised by the petitioners is only an afterthought. The petitioners’ callous approach in pursuing their case is also

evident from the fact that the Trial Court had imposed repeated costs upon them for their non-appearance.

11. In the considered opinion of this Court, no ground for interference with the impugned order is made out. Resultantly, the instant civil revision petition is dismissed alongwith pending application.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 6, 2023/v



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