



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 06, 2022

+ RFA 289/2020, CM Nos. 31213/2020, 31214/2020, 12897/2021,
12898/2021 & 15840/2021

MAJOR SURESH YADAV

..... Appellant

Through: Mr. Mukul Gupta, Sr. Adv. with
Mr. Mukesh Gupta & Mr. Tarkeshwar
Nath, Advs.

versus

SH. JUGAL UPPAL & ORS.

..... Respondents

Through: Mr. K.K. Sharma, Sr. Adv. with
Mr. S.S. Wadhwa & Mr. Rajesh
Kumar, Advs. for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 12898/2021

For the reasons stated in the application, the same is
allowed, subject to just exceptions.

The application stands disposed of.

RFA 289/2020, CM No. 31214/2020 (for delay)

1. The appeal is filed against the original *ex-parte* judgment
/ decree dated December 22, 2017 of the learned Additional
District Judge ('ADJ', for short), Saket Courts, New Delhi, as
well as order dated February 10, 2020 in M.No.98/2018, whereby



the application of the appellant under Order IX Rule 13 read with Section 151 of CPC was dismissed by the Trial Court. The appeal is accompanied by an application seeking condonation of 933 days' delay with regard to filing of the appeal against the original judgment / decree. Since the facts and the submissions made by the counsels for seeking condonation of delay, on the impugned Judgment / Decree and on the order rejecting the application under Order IX Rule 13 of CPC being identical/similar, I intend to decide both of them together.

2. This appeal has been filed with the following prayers: -

“Therefore, this Hon'ble Court may graciously be pleased to: -

(i) Quash and set aside the order dated 10.02.2020 passed by the Ld.ADJ-02, Saket, New Delhi.in CS No. 208887/2016.

(ii) Quash and set aside Judgement ad decree dated 22.12.2017 with all consequential action.

(iii) Call for the Trial Court Record pertaining to the present case.

(iv) Pass any other order that is deemed fit and proper under the facts and circumstances of the case.”

3. The facts in brief as noted are that, the respondent no. 1 and 2 herein / plaintiffs filed a suit in 2007 seeking cancellation of a Sale Deed dated August 24, 2006 executed by defendant no. 5 / respondent No. 6 through defendant no. 3 / respondent No. 5, in favour of appellant / defendant no. 4 in respect of suit property i.e., Mustatil No. 87 Killa No, 17(4-16) and Killa No. 14 (4-12) situated in Dera Mandi, Mehrauli, New Delhi, by declaring the same as null and void along with a decree thereby declaring them as owners of the suit property. In



addition, respondents Nos. 1 and 2/ plaintiffs sought possession and permanent injunction. The appellant herein was arrayed as defendant no. 4 in the suit, which was instituted in this Court in view of the then limit of pecuniary jurisdiction. Summons were issued on November 05, 2007 and the defendants therein, i.e., the appellant and respondent Nos. 3 to 6, were directed not to create any interest or part with the possession of the suit property in favour of any third party.

4. For the sake of convenience, the appellant/defendant No. 4 and the respondent Nos. 1 and 2/plaintiffs shall hereinafter be referred to as ‘appellant’ and ‘plaintiffs’ respectively.

5. The appellant in his Written Statement filed before the Trial Court took preliminary objections that the documents relied upon by the plaintiffs do not create any right whatsoever in their favour, and that the suit is liable to be rejected under Order VII Rule 11 of the CPC since no cause of action has arisen in favour of the respondent Nos.1 and 2 / plaintiffs and against the appellant. He also maintained that he had purchased the suit property vide registered sale deed dated August 24, 2006 which has been executed legally after making payment to the vendor and thus he has become absolute owner of the said property, with actual physical possession.

6. On completion of pleadings, the matter was notified for recording evidence of the plaintiffs’ witnesses. Examination-in-chief and cross-examination of PW-1 and PW-2 therein were concluded by February 11, 2015. Admittedly, the appellant carried out the cross-examination of PW-1 on his own, without



the assistance of his counsel.

7. In view of the changes brought about in pecuniary jurisdiction of Courts, and the notification dated November 24, 2015, issued by the Registrar General of this Court, the Joint Registrar (Judicial), vide order dated January 19, 2016, transferred the matter from this Court to the Court of the learned District Judge, Saket Courts with a direction to the parties to appear before the District Judge on May 18, 2016. According to the appellant, none of the defendants therein, except defendant no. 3 / respondent No. 5, had appeared before the Joint Registrar (Judicial), on January 19, 2016, i.e., the date on which the order transferring the matter was passed.

8. Accordingly, the suit was transferred to the District Court, Saket, and was later assigned to the Court the ADJ-06, i.e. the Trial Court, for disposal. The parties were directed to appear before the Trial Court on June 02, 2016.

9. On June 02, 2016, when the matter was listed before the Trial Court, only the counsel for the respondent Nos. 1 and 2 / plaintiffs appeared. Accordingly, Court notice was issued to the defendants therein (including the appellant herein) as well their counsels for appearance on August 29, 2016. On August 29, 2016 only the counsels for the plaintiffs and defendant No. 3 / respondent No. 5 appeared. Fresh notice was further issued to the appellant and defendant No. 5 / respondent No. 6 for the next date. On November 17, 2016, i.e. the next date of hearing, the appellant still remained absent, and hence the Trial Court issued notice to the counsel who was representing the appellant in the



proceedings before this Court. On the next date, i.e. February 06, 2017, upon non-appearance of the appellant or his counsel, another fresh notice was issued to the counsel, to appear on the next date. No appearance was made either by the appellant or the counsel on the next date, i.e., May 08, 2017. No fresh notice was issued.

10. On September 21, 2017, dates were fixed for defendants' evidence after closure of the plaintiffs' evidence (i.e., respondent Nos. 1 and 2). Defendants No. 1, 2 and 5 were directed to lead evidence. No such direction was issued to the appellant. However, none of the defendants led any evidence, and consequently, on October 28, 2017, the right to lead evidence on behalf of the defendants (which includes defendant No.4, the appellant herein) was closed and the matter was put up for arguments. The arguments were concluded on December 04, 2017 and judgment was passed on December 22, 2017.

11. It is the case of the appellant that it is evident from the Order sheets that he remained un-served and had not appeared before the Trial Court after transfer of the matter. He was also not proceeded *ex-parte*.

12. It is the stand of the appellant that he had chosen to defend the suit by himself, without assistance of a counsel. The last appearance of his counsel was on May 02, 2011 before this Court, prior to transfer of the same to the District Court, Saket.

13. Mr. Mukul Gupta, learned Senior Counsel appearing for the appellant stated that the appellant is the only son to an ailing mother aged 85 years, and a father aged 94 years who reside in a



village in Haryana and that on account of the commitment to look after his parents, he used to travel often from Delhi, where he resided in the suit property.

14. It is stated in the appeal that, due to the commitment towards his parents; the fact that he discontinued the services of his counsel in 2011, and the fact that the case was transferred to the District Court, Saket, he lost track of the proceedings in the matter. It is also stated that his mother had to undergo bilateral knee changes and the appellant himself had suffered a heart attack in February 2018.

15. According to Mr. Gupta, while the appellant was in the process of recovering after the heart attack, he came to know about the disposal of the suit when one of his friends, Deepak Hastir, apprised of the same to him on November 10, 2018. Immediately thereafter, he rushed to his lawyer and applied for the certified copy of entire record of the suit in view of non-availability of the paper book with him. During the process, he came to know that the suit was disposed of against him by passing a decree *ex-parte* dated December 22, 2017 directing him to hand over the actual physical possession of the suit land to the plaintiffs and restraining the defendants (including the appellant) from interfering in the plaintiffs' use and enjoyment of the same.

16. As per Mr. Gupta, the decree holders / plaintiffs / respondent Nos. 1 and 2 have already approached the executing Court by way of Execution Petition bearing No. 364 of 2018 seeking execution of the decree dated December 22, 2017. According to the plaintiffs, the decree could not be executed



since the guard deputed at the decretal property resisted the execution of warrant of possession, and therefore they have sought police aid. The executing Court has directed a request in this regard be sent to the DCP for the sanction of police aid to the decree holders/ plaintiffs/ respondent Nos. 1 and 2, vide order dated October 28, 2018. The decree holders/ plaintiffs/ respondent Nos. 1 and 2 have also been directed to move an application before the office of the Sub Registrar-V, Mehrauli, for cancelation of the sale deed dated August 24, 2006 in respect of the decretal property. It is submitted that the appellant has no guard at the decretal property and therefore, the allegations of resistance by the guard in order to take police assistance by the decree holders / plaintiffs/ respondent Nos. 1 and 2, is incorrect and concocted.

17. It is stated by Mr. Gupta that certified copy of the paper book was received by the appellant / defendant No.4 only on November 24, 2018 as November 21 to November 23, 2018 were holidays. After getting the paper book, the appellant / defendant No.4 without delay, on December 01, 2018 moved an application under Order IX Rule 13 read with Section 151 CPC for setting aside the *ex-parte* decree before the Trial Court. A separate application seeking stay of the execution proceedings was also filed.

18. The plaintiffs filed their joint reply to the application on March 11, 2019. Thereafter the application was heard by the Trial Court and was dismissed, *inter alia* on the basis that the appellant had sufficient time to find out the pendency of the case, even if



the ground canvassed in the application was to be believed. According to Mr. Gupta, the case of the appellant that summons were not served on him during the pendency of the proceedings having been accepted by the Trial Court, the dismissal of the application is primarily on presumption, which is not permissible in law.

19. Mr. Gupta had also stated that the delay in filing the appeal against the judgment/decreed dated December 22, 2017 is because the appellant was pursuing the application under Order IX Rule 13 of CPC before the Trial Court, which was finally decided on February 22, 2020. He seeks reliefs as prayed for in the appeal.

20. On the other hand, Mr. K.K. Sharma, learned Senior Counsel appearing for the respondent Nos.1 and 2 has vehemently opposed the application and the appeal, stating that the appellant having appeared in the proceedings himself till 2014 and having cross examined PW-1, was required to keep a tab on the proceedings. He stated that since the appellant was not being represented by any counsel, he was required to be vigilant in pursuing the litigation. The plea of his parents being of advanced age; the knee surgery of his mother and also his heart attack, are only ploys to seek condonation of delay in filing the appeal and arguing the appeal itself. In fact, he highlighted that in the year 2017, the appellant was in judicial custody after having been arrested in one of the two FIRs registered under the Delhi Public Gambling Act, 1955 and the Delhi Excise Act, 2009, and was released on bail only in the month of September 2017. Hence, it



is not a case of lack of knowledge about the proceedings but intentionally avoiding the proceedings.

21. It is stated by Mr. Sharma that all the defendants in the original suit, including the appellant herein were served with the summons of the Court and accordingly all the defendants appeared before this Court. The appellant also had appeared and filed his Written Statement in the suit. On the basis of the Written Statements filed and the pleadings of the parties, the following issues were framed by this Court on October 07, 2009; -

- 1. Whether the plaintiffs can prove that the property could not have been sold through a Sale Deed dated August 24, 2006, as alleged by them? (OPP)*
- 2. Whether the defendant Nos. 1 & 2 can prove that the defendant No. 3 was constituted as Attorney by the defendant No. 5, plaintiff Nos. 1 and 2 and defendant No. 1 and 3 jointly? (OPD)*
- 3. Whether the plaintiffs can prove that the defendant No. 3 was not authorised by them to enter into the transaction recorded by the Sale Deed dated August 24, 2006? (OPP)*
- 4. Whether the first two defendants can prove that they paid consideration out of the amounts received by the transaction recorded in the Sale Deed dated August 24, 2006, to the plaintiffs? (OPD)*
- 5. Is the impugned Sale Deed dated August 24, 2006 liable to be cancelled/declared void? (OPP)*
- 6. Whether the plaintiffs are entitled to declaration as claimed? (OPP)*
- 7. Whether the plaintiffs are entitled to a decree for possession of the suit land against defendant No. 4? (OPP)*
- 8. In case finding to issue No. 7 is in the affirmative, are the plaintiffs entitled to a decree for permanent*



injunction, as claimed?

22. It is stated that after giving sufficient opportunities to all the parties to the suit, the Trial Court decided the said suit on merits vide judgment / decree dated December 22, 2017. It is the case of the plaintiffs / respondent Nos. 1 and 2, that the said judgment was not made *ex-parte* and as such, the Trial Court was right in dismissing the application filed under Order IX Rule 13 of CPC. The Trial Court has categorically held that the appellant had the sufficient time and yet he had not shown any sufficient cause for not appearing before the Court on the dates of hearing for about two years.

23. Mr. Sharma stated that the decree dated December 22, 2017 has been fully acted upon and the possession of the suit premises has been taken by the plaintiffs through the bailiff duly appointed by the Executing Court on April 01, 2021 and the sale deed dated August 24, 2006 was cancelled by the Sub-Registrar-V, Kalkaji (Mehrauli), New Delhi on August 30, 2018, and the Executing Court was duly informed of the cancellation. Even mutation in the names of the plaintiffs has been carried out.

24. It is contended by Mr. Sharma that the appellant remained dormant for more than two years, because he was running an illegal casino on the first floor of the suit property and was arrested on August 23, 2017 along with some others. He was also found serving liquor in the suit premises and two FIRs, one bearing No. 399/2017 under Section 3 and 4 of the Delhi Public Gambling Act, 1955 and another bearing No. 401/2017 under Section 33, 38 and 47 of the Delhi Excise Act, 2009 were



registered. He was later granted bail by the learned ASJ, Saket Courts on September 08, 2017.

25. It is reiterated that the judgment / decree dated December 22, 2017 is not an *ex-parte* judgment, as the appellant was never proceeded *ex-parte* by the Trial Court. However, Court notices were sent to his address and to his counsel, but they chose not to appear before the Trial Court. It is also stated that the counsel who was appearing for the appellant in the application filed before the Trial Court under Order IX, Rule 13 of CPC, is the same counsel who was appearing for him in this Court during trial, before the matter was transferred to the District Court, in view of the change in pecuniary jurisdiction. It is also the same counsel who has moved the present appeal before this Court. It is submitted that the counsel for the appellant and the appellant himself deliberately did not appear on the dates fixed, and the Trial Court has rightly decreed the suit. The appellant was never proceeded *ex-parte* and the defense of the defendants therein, including that of the appellant was closed after giving ample opportunity to lead evidence; the appellant simply chose not to avail the same.

26. Mr. Sharma submitted that the appellant has stated in the present appeal that he came to know about the disposal of the suit on November 10, 2018 when one of his friends, Deepak Hastir apprised him of the same. However, in the application filed before the Trial Court under Order IX Rule 13, the appellant has stated that on November 08, 2018, one of his relatives, Gaurav Yadav, who practices law in the Punjab and Haryana High Court,



had sent him the judgment dated December 22, 2017. It is stated by Mr. Sharma that this discrepancy would show that the present application is false and frivolous, and is liable to be dismissed.

27. It further submitted that the medical documents placed on record by the appellant are fake and forged. That apart, the documents show only hospitalisation of 3-4 days of the mother of the appellant in January 2017, and of the appellant for two days, whereas the delay is of more than 933 days. The non-appearance of the appellant, despite having full knowledge of the pendency of the suit against him before the Court was intentional and deliberate.

28. Mr. Sharma submitted that nowhere is it stated in the appeal that the counsel had not received the Court notice issued by the Trial Court. The counsel had also not filed any application before the Trial Court seeking discharge from the said case.

29. It is his submission that if the summons issued on the correct address have not been returned, the presumption is that the summons has been received by the addressee. Reliance in this regard has been placed on the judgment of the Supreme Court in ***N. Parameswaran Unni v. G. Kannan and Anr., (2017) 5 SCC 737.***

30. He further submitted that where sufficient cause is not shown by applicants seeking setting aside *ex-parte* order and applications are based on vague, evasive and false averments, then, *ex-parte* decree is not to be set aside. He stated that it is a settled law that Courts shall not set aside a decree in a case where there is a mere irregularity in service of summons or in a case



where defendant had notice of date and sufficient time to appear in Court. To buttress this argument, Mr. Sharma has referred to the judgment of the Supreme Court in *Parimal v. Veena*, AIR 2011 SC 1150, and the judgments of this Court in *Pal News Media (P) Ltd. and Ors. v. Super Cassettes Industries Ltd.*, (2015) 220 DLT 698, *Sudarshan Sareen v. National Small Industries Corporation Ltd. and Anr.*, FAO (OS) No. 482/2011, decided on November 01, 2013, *National Small Industries Corporation Ltd. v. SSI Products Marketing Organisation Ltd.*, Anr., (CS) (OS) No.1982/1999, decided on August 08, 2011 and *Satya Infrastructure Ltd. & Ors. v. Satya Builders Pvt. Ltd.*, 2015 (225) DLT 234. He seeks the dismissal of the application and the appeal.

31. Mr. Gupta in his rejoinder submission stated, there is no delay in filing the present appeal challenging the order dated February 10, 2020 in CS No. 208887/2016, whereby Trial Court dismissed the application under Order IX Rule 13 of CPC seeking to set aside the judgment / decree dated December 22, 2017 which was passed without hearing the appellant herein. Reference is made to the Order dated March 23, 2020 in *Suo Motu Writ Petition (Civil) No. 3/2020, RE: Cognizance for Extension of Limitation*, wherein the Supreme Court extended the period of limitation prescribed under the general law of limitation or under any special laws with effect from March 15, 2020 till further orders in view of the situation arising from onset of the COVID-19. He also submitted that the appeal was filed within the prescribed period of limitation against the order dated



February 10, 2020.

32. That apart, it is submitted that the appellant had called his relative Gaurav Yadav to wish him Diwali on November 08, 2018 who, during the conversation, out of curiosity, asked the appellant about the status of the suit and when the appellant told him that he had not received any notice about the date of hearing of suit after transfer of the same. He informed the appellant that it is possible to check the status of the case from the website of the Court and after doing the same, he informed the applicant that the case has been disposed of on December 22, 2017. It is submitted that the appellant was then apprised of the same again on November 10, 2018 by his friend Deepak Hastir.

33. Mr. Gupta also submitted that the Supreme Court has categorically held that it was incumbent on the part of the Court to serve notice informing all the parties about the transfer of proceedings and date on which they are to appear before the District Judge. Reference in this regard is made to Rule 6 of Chapter 13 of Delhi High Court Rules and the decision of the Supreme Court in ***Reena Sadh v. Anjana Enterprises, 2008 (12) SCC 589***. It is stated by Mr. Sharma that the present appeal is squarely covered by the aforesaid judgment.

34. He also stated the fact that summons were not served on the appellant or his counsel during the pendency of the proceedings having been accepted by the Trial Court, while dismissing the application, shall make the *ex-parte* judgment / decree, unsustainable and need to be set aside. In this regard he has relied upon the judgment of the Allahabad High Court in



Saroj Singh Chauhan v. Arvind Kumar Chauhan, AIR 2020 All 26, and the judgment of the Punjab and Haryana High Court in ***Prabhawati Devi and Anr. v. Gurdish Singh, Civil Revision No. 7550 of 2017(O&M)*** decided on January 08, 2017.

35. Additionally, he submitted in brief, the events that have taken place subsequent to the filing of this appeal. On January 28, 2021, the matter was directed to be listed on April 06, 2021. In the meantime, the execution petition which was filed by the plaintiffs on April 05, 2018, came up for hearing before the Executing Court on February 08, 2021. The appellant remained unrepresented. It is contended that the counsel for the plaintiffs deliberately did not bring to the notice of the Executing Court that-

- (a) Notice is issued on the stay application filed along with this appeal.
- (b) The appeal was heard in part and a short date was given.
- (c) The decree holder was directed by this Court to file on record, the order issued by the Sub-Registrar, cancelling the Sale Deed.

It is submitted by Mr. Gupta that it is because the aforesaid factual aspects were concealed from the Executing Court that the Court had issued warrant of possession vide order dated February 08, 2021. He further contended that any order obtained by concealment of relevant facts or by playing fraud, would render the said order *non est*.

36. He also averred that under the garb of warrant of



possession, the appellant was thrown out from the suit premises on April 01, 2021 and consequently, he was forced to move an application bearing CM No. 12897/2021 in RFA No. 289 of 2020 seeking restraint order against the respondents from creating third party interest, which was granted by this Court.

37. It is submitted that the possession of the suit property taken by the respondents under the garb of warrant of possession is illegal and unsustainable more particularly when the impugned judgment / decree itself is unsustainable and deserves to be set aside. He vehemently contended that the alleged cancellation of the sale deed is also unsustainable and illegal and that the appellant is entitled to restoration of peaceful possession of the suit premises.

38. Having heard the learned counsels for the parties and perused the record and the written submissions filed by them, the issue which arises for consideration is whether the Trial Court was justified in proceeding with the suit on its transfer from this Court without ensuring notice to the appellant and / or his counsel has been effected and deciding the same in favour of the plaintiffs/ respondent Nos. 1 and 2, and also rejecting the application of the appellant under Order IX Rule 13 read with Section 151 of the CPC.

39. At the outset, I may state that when the suit was pending in this Court, the appellant was represented by the same counsel who is representing the appellant in these proceedings. He last appeared in the suit (when it was pending in this Court), in the month of May 2011. Thereafter, it was the appellant/defendant



No. 4 who was prosecuting the suit. He last appeared in the proceedings before this Court on April 03 and April 04, 2014 when he cross-examined the PW-1.

40. The plea of Mr. Gupta was that, thereafter, the presence of the appellant / defendant No. 4 was not required in the proceedings, at least till he was to produce his evidence. Further, he was taking care of his old parents living in Haryana. In this regard, Mr. Gupta had also relied upon the medical record for the period between December 2016 to January 2017, of the appellant's mother, who had undergone bilateral knee changes.

41. On the other hand, Mr. K.K. Sharma, apart from stating that the medical record relied upon by the appellant cannot be believed being forged and fake and the hospitalisation of the appellant's mother being for 3-4 days and also his own hospitalisation being only for 2 days, there is no justifiable reason for the appellant not to appear in the suit before the Trial Court.

42. The above submission of Mr. Sharma and also his submission that the appellant was in judicial custody during the period between August 2017 to September 2017 and also the fact that the appellant, even after the judgment / decree dated December 12, 2017 had not cared to ascertain the status of the suit at least till November 2018, is appealing on a first blush, but on a deeper consideration, the real issue is whether the Trial Court, in terms of Chapter 13 Rule 6 of the Delhi High Court Rules, was under obligation to inform the appellant through notice about the transfer of the suit and calling upon him to appear before the transferee Court on the date fixed. The order



dated January 19, 2016 that was passed by the Joint Registrar (Judicial) of this Court while transferring the suit to the District Court reads as under:

“IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ***CS(OS) 2180/2007***
SH. JUGAL UPPAL & ANOTHER

..... Plaintiffs

Through: Mr. Rakesh Kumar Garg, Adv.

versus

SH. RAJINDER KUMAR BIDANEY & OTHERS

..... Defendants

Through: Mr. J.P.N. Shahi, Adv for D-3.

CORAM:

ASHUTOSH KUMAR (DHJS), JOINT REGISTRAR
(JUDICIAL)

ORDER

%

19.01.2016

CS(OS) 2180/2007

In view of notification no.27187/DHC/Orgl. Dated 24.11.2015, the present matter stands transferred. Parties are directed to appear before the Court of Ld. District Judge, (South), Saket Court, Delhi on 18.05.2016 at 10.00 a.m. The next date of hearing i.e. 03.03.2016, earlier given, stands recalled.

ASHUTOSH KUMAR (DHJS)
JOINT REGISTRAR (JUDICIAL)

JANUARY 19, 2016”

43. Concedingly, the appellant was not present in the proceedings on the day when the suit was transferred. So, he did not have the notice for appearance before the transferee Court. Suffice to state, under the above Rule, the Court was required to issue notice to the appellant / defendant No. 4 for his appearance before the transferee Court, more so, when the appellant was not



declared *ex-parte*. This is so stated by the Supreme Court, while dealing with almost identical facts, in the case of **Reena Sadh** (*supra*) wherein, the appellant therein was arrayed as the third defendant in a civil suit filed by Anjana Enterprises, the respondent therein. The suit was initially filed in this Court and was pending hearing. There were three other defendants along with the appellant. The suit was for recovery of an amount of ₹14,50,000/- with interest.

44. During the pendency of the suit, the pecuniary jurisdiction of the District Courts was enhanced and, therefore, the suit came to be transferred to the Court of ADJ, Delhi by order dated August 8, 2003. On transfer, the ADJ thereafter sent notices to the parties and the matter was fixed for October 22, 2003. On October 22, 2003, it was found that the defendants had not been served and therefore, the Trial Court passed an order that the defendants and their counsel should be served the Court notice for December 1, 2003. The addresses for these notices were allegedly furnished by the respondent / plaintiff on that date. It is seen that on December 1, 2003, the Trial Court issued notice only to the counsel of the defendants. The matter was fixed on January 7, 2004 for the appearance of the parties. The appellant before the Trial Court was proceeded *ex parte* on September 22, 2004 and ultimately an *ex-parte* judgment / decree was passed on October 27, 2005.

45. This resulted in the appellant getting no opportunity to take part in the proceedings since she was never served a notice of the proceedings which were transferred from this Court to the



Court of ADJ, Delhi and also the impact and effect of Chapter 13 Rule 6 of the Delhi High Court Rules was also not realised by the Courts below, under which it was imperative that after the transfer, all the parties were bound to be informed regarding the transfer and the dates.

46. It is also noted by the Supreme Court that the Trial Court did not realise that the counsel who represented the original defendant Nos.1, 2 and 4 was not the counsel of the appellant and, therefore, the notice served on the said counsel did not amount to notice being served on her.

47. A plea was taken on behalf of the respondent that there were circumstances on record to suggest that the appellant was never serious about these proceedings and despite a number of opportunities having been granted to her, she remained dormant in defending the suit. It was also urged that the appellant did not show the expediency that was expected from her even in the matter of making an application under Order IX Rule 13 of CPC. On the appeal preferred against the judgment of the Trial Court, this Court by relying on Order IX Rule 11 of CPC held that since the appellant had already received notice of the proceedings before this Court through her husband on October 6, 2001, it was clear that she was adopting a policy of hide and seek and was taking the Court for a ride. This Court also mentioned that the counsel Mr. L.D. Adlakha and Mr. Ajay Amittabh Suman who appeared on August 8, 2003 before the Joint Registrar of this Court should have clarified that they are not representing the appellant (defendant No.3). This Court ultimately held that Rule



6 of Chapter 13 of the Delhi High Court Rules was duly complied with.

48. The question before the Supreme Court was whether there was compliance of Chapter 13 Rule 6 of the Delhi High Court Rules and if there was no compliance, whether the decree was liable to be set aside under Order IX Rule 13 of CPC. The Supreme Court in paragraphs 14 to 21 has held as under:

“14. In the backdrop of these findings it is to be seen as to whether there was compliance with Rule 6 of Chapter 13 and if there was no compliance, the decree was liable to be set aside under Order 9 Rule 13 CPC. Before we approach this question, few admitted facts would be necessary to be noted. They are:

(i) The appellant was not being represented by the counsel who appeared in the High Court on behalf of Defendants 1, 2 and 4 (Ajay Amitabh Suman and/or K.K. Sharma). Shri L.D. Adlakha who allegedly appeared before the Joint Registrar Shri N.P. Kaushik on 8-8-2003 was not engaged by the appellant being the plaintiff's counsel. Thus, there was no counsel representing the appellant either before the Delhi High Court or before the Additional District Judge, Delhi.

(ii) Admittedly, there was no notice of transfer of proceedings or dates, to the appellant and notice to Defendants 1, 2 and 4 was deemed to be sufficient notice to Defendant 3.

(iii) Defendant 3 was not proceeded ex parte before the High Court at any point of time and no order under Order 9 Rule 11 CPC was ever passed by the Delhi High Court or even by the Court of Additional District Judge, Delhi.

15. The wording of Rule 6 of Chapter 13 is as follows:

“Records be sent immediately to the court to which case is transferred.—When a case is transferred by



administrative order from one court to another, the Presiding Officer to the court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the court to which the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the court passing the order should fix a date on which the parties should attend the court to which the case is transferred.”

16. In this case, the matter was transferred by the order of the Joint Registrar Shri N.P. Kaushik by his order dated 8-8-2003 which order reads thus:

*“Present : Mr L.D. Adlakha for the plaintiff.
Mr Ajay Amitabh Suman for the defendant.*

Sl. No. 1441/97

This is a case where the value of the suit for the purpose of pecuniary jurisdictions is less than Rs 20 lakhs. In view of the orders passed by the Hon'ble Chief Justice the present matter is transferred to the Court of Hon'ble District Judge, Tis Hazari Courts, Delhi, for assignment to a court of competent jurisdiction. Parties and/or their counsel to appear before the Hon'ble District Judge, Delhi on 25-9-2003.”

This being an administrative order, passed by the Joint Registrar, it was incumbent on the part of the High Court to let all the parties know about the date on which they should appear before the District Judge. In this order the Registrar has recorded the date of 25-9-2003 as the date on which the parties should appear before the District Judge, Delhi. However, it is obvious that it was only Shri Ajay Amitabh Suman who was appearing for the defendants. There is no reference whatsoever in the above order that Shri Ajay Amitabh Suman was appearing for “all” the defendants.



17. The language of the Rule provides that the Presiding Officer of the court from where the matter was transferred (in this case the Delhi High Court) was responsible for informing the parties regarding the transfer as also the date on which the parties were supposed to be present before the court to which the case was transferred (District Judge in this case). Admittedly, this did not happen in the case of the present appellant who was the original Defendant 3. It is obvious that the Joint Registrar Shri N.P. Kaushik proceeded under the impression that Shri Ajay Amitabh Suman was appearing for all the defendants. Therefore, there was no compliance with this Rule. The courts below have observed that on this date the appellant was not appearing before the court at all though she was served way back in 2001. However, it is nobody's case and indeed the records do not show that she was proceeded ex parte by the High Court. Therefore, she was certainly in the array of parties on 8-8-2003 and the Rule thus applied to her with full force. It cannot, therefore, be said that the word "parties" used in the Rule did not include her who was the original Defendant 3.

18. In our opinion the courts below have obviously committed an error in treating that the appellant not being an interested party was not required to be informed of the transfer of the case as also the date on which the parties were expected to appear before the court to which the case was transferred. It is to be seen that in the language of the Rule the word used is "parties" and not "interested parties". If we accept the interpretation put forth by the courts below, the word "interested" would have to be read in the Rule which is not permissible.

19. From the very language of the Rule, the Rule has to be held as mandatory rule and indeed in the absence of such Rule, the parties concerned would have no notice of the transfer of the case nor of the proceedings in such a transferred case. The Rule, therefore, has to be held requiring strict



compliance with the same.

20. This is apart from the fact that the counsel appearing for Defendants 1, 2 and 4 was under no duty to inform that he was not representing Defendant 3 (the appellant herein). Once it is accepted that there was no counsel representing Defendant 3 (the appellant herein) it was incumbent on the part of the Registrar to let the appellant know about the date in this case i.e. 24-9-2003.

21. Further, when we see the order-sheet of the Court of Additional District Judge, Delhi, it is apparent that on 25-9-2003 neither the plaintiff nor the defendants appeared before the court and later, on the same date, one Ghanshyam Dass, partner of Anjana Enterprises i.e. the plaintiff appeared before the court and noted the date. Even on that date no other defendant had any knowledge about the further date on which the suit was fixed before the Additional District Judge. It is obvious that thereafter the matter was fixed for 1-12-2003 on which date the defendant was not served and, therefore, the matter was adjourned to 7-1-2004 when again the matter was adjourned for fresh notice to the defendants and was fixed for 9-4-2004 and it was only on 12-4-2004 that one Avinash Lakhan Pal, a proxy counsel for Shri K.K. Sharma, Advocate appeared and then the matter was adjourned for filing the reply. (There appears to be an obvious mistake in the order passed by the High Court inasmuch as it is mentioned that Shri Ajay Amitabh Suman appeared on 12-4-2004 and the matter was adjourned to 8-4-2004 which is not possible.)”

49. The said judgment relied upon by Mr. Gupta applies to the present facts on all fours. Chapter 13 Rule 6 of the Delhi High Court Rules which is reproduced as under relates to transfer of cases to the District Court and mandates issuance of notice to all



the parties:

“6. Records be sent immediately to the court to which case is transferred: when a case is transferred by administrative order from one court to another, the presiding officer to the court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the court to which the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the court passing the order should fix a date on which the parties should attend the court to which the case is transferred.”

50. I have perused the record of the Trial Court which does not depict, despite issuance of notice to the counsel for the appellant, that he has been served. In the absence of service, and due to the fact that his counsel was not in the knowledge that the proceedings have been transferred to the District Court and are pending there, the impugned judgment / decree dated December 22, 2017, is liable to be set aside to the extent of the appellant. Having said that, the Trial Court has while considering / deciding the application of the appellant under Order IX Rule 13 CPC, has not considered the position of law as set out in the case of **Reena Sadh (supra)**. As I have held, the suit itself could not have been decided without notice to the appellant and consequently, the judgment / decree dated December 22, 2017 is bad, it must necessarily follow that even the order dated February 10, 2020, is untenable.

51. I have considered the issue whether the non-service of



notice to the appellant or his counsel resulting in a decision against him has caused any prejudice to the appellant. The very fact that the suit has been decided in favour of the plaintiffs (respondent Nos.1 and 2) and against the appellant herein, the same itself is a prejudice. That apart, I find that the Trial Court has in paragraph 33 of the judgment / decree dated December 22, 2017 stated that- *“despite number of opportunities none of the defendants led any evidence”*. Similarly, in paragraph 38 the Trial Court held- *“As far as issue No.4 is concerned, no evidence has been led by the defendants to prove this issue”*. Similarly, in paragraph 47, the Trial Court held- *“xxx... Further, defendant No.4 who is the most affected by the prayer made in this suit, i.e., for cancellation of the sale deed, did not even bother to lead evidence”*. I also find the Trial Court had relied upon the averments in the written statement of the appellant to hold that the appellant has taken multiple contradictory stands in the written statement. But the fact is the appellant was not afforded the opportunity to justify the said contradictions and explain his stand. That apart, in the absence of notice of the proceedings, the appellant could not produce himself in the witness box, or any other witness he deemed it appropriate. It is apparent that prejudice has been caused to the appellant in not being notified about the transfer of the suit to the District Court / Trial Court.

52. Insofar as the aspect of delay in filing the appeal is concerned, the impugned judgment / decree is dated December 22, 2017 and the appellant had filed an application under Order IX Rule 13 of CPC before the Trial Court on December 01, 2018.



I find that a 90 days period of limitation was available to the appellant for filing a First Appeal before this Court, i.e., he could have filed the appeal till mid-March 2018. By excluding the said period, there would be delay between the period from March to December 2018 and after December 01, 2018, the appellant was prosecuting the application under Order IX Rule 13 of CPC, which came to be decided only on February 10, 2020. The present appeal was filed before this Court on October 05, 2020, and in view of the order of the Supreme Court in ***Suo Motu Writ Petition (Civil) No.3/2020***, the appellant shall be entitled to the benefit thereof, in terms of which limitation stops running after March 15, 2020, which was within a period of 90 days from the date of the order dated February 10, 2020. In view of my conclusion above, the delay in filing the appeal against the order dated December 22, 2017 need to be condoned.

53. Mr. Sharma in support of his submission has relied upon the judgment in the case of ***N. Parameswaran Unni (supra)*** wherein, the Supreme Court has held that when a notice is sent by registered post and is returned with postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed that is the notice has been received by the addressee. The said case is clearly distinguishable on facts, there is nothing filed on record before me to show that any notice has been received / refused by the appellant or his counsel.

54. Mr. Sharma has referred to the judgments in the cases of ***Parimal (supra)***, ***Pal News Media (P) Ltd. and Ors. (supra)***,



Sudarshan Sareen (supra), National Small Industries Corporation Ltd. (supra) and Satya Infrastructure Ltd. & Ors. (supra) wherein it was held that the Court shall not set aside the *ex-parte* decree if there is only a mere irregularity of service, when the defendant had sufficient time and notice of the date to appear in the Court and also if the parties fail to demonstrate any sufficient cause for non-appearance. The said judgments have no applicability in the facts of this case as it is clear from my conclusion above, neither the appellant nor his counsel had any notice from this Court or the Trial Court on the suit having been transferred to the District Court on January 19, 2016. On the said date, only the defendant No.3 was represented in Court.

55. It follows, in the absence of notice to the appellant, the Trial Court could not have proceeded with the suit and decided the same, that too in favour of respondent Nos.1 and 2 (plaintiffs) and against the appellant herein which is in violation of the principles of natural justice.

56. Further, the reasoning given by the Trial Court while rejecting the application of the appellant under Order IX Rule 13 is that the appellant was in the knowledge of the proceedings and he did not care to ascertain the position of the proceedings for a long period and as such he could not be equated with a case where the defendant had no knowledge of the proceedings. This conclusion of the Trial Court is not tenable more so in view of the aforesaid position of law laid down by the Supreme Court.

57. Mr. Gupta had heavily relied upon the order dated August 29, 2016 wherein the Trial Court has observed that the notice



issued to the appellant has not been received back, and also on a noting on the order sheet of the said order, which reveal that the defendant No.4 i.e., the appellant has not been served. Similarly, the Trial court in its order dated November 17, 2016 has observed that the appellant remained unserved and the noting on the said order sheet reveals that the Court Notice has not been received back. In fact, the above position is accepted by the Trial Court in its order dated February 10, 2020. So, it follows that even the rejection of the application under Order IX Rule 13 read with Section 151, CPC, is contrary to the aforesaid position of law and as such unsustainable. The cases of *Saroj Singh Chauhan (supra)* and *Prabhawati Devi and Anr. (supra)*, on which reliance has been placed by Mr. Gupta, need not be gone into, in view of my above discussion / conclusion.

58. During the course of hearing, it was brought to the notice of this Court that execution proceedings were initiated by the respondent Nos.1 and 2 and pursuant thereto, the possession of the suit property has been taken by the said respondents and even the sale deed has been cancelled by the Sub-Registrar-V, Mehrauli and mutation with regard to the said property has been concluded. But that shall not mean that the appellant should be denied an opportunity to put his case through evidence and arguments before the Trial Court. Further, on an application filed by the appellant in these proceedings, this Court on April 06, 2021 had directed the respondents not to create any third-party rights with regard to the title and possession of the suit property.

59. Accordingly, the appeal is allowed and the impugned



judgment / decree dated December 22, 2017 and the order dated February 10, 2020 qua the appellant only, are set aside. The matter is remanded back to the Trial Court to start the proceedings qua the appellant herein, from the stage where the proceedings were, when the case was transferred from this Court to the District Court and decide the same afresh qua the appellant only. Till such time the suit is decided qua the appellant herein, *status quo* with regard to the suit property, as existing today shall continue. The appeal and application are disposed of.

CM Nos. 31213/2020, 12897/2021, 12898/2021 & 15840/2021

60. In view of my decision in the appeal above, the applications have become infructuous and are dismissed as such.

V. KAMESWAR RAO, J

JANUARY 06, 2022/aky

न्यायमेव जयते