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

% **Date of decision: 30th October, 2023**

+ **FAO 215/2023 and CM APPL. 43854/2023 (for delay of 173 days in filing regular first appeal), CM APPL. 43855/2023 (stay), CM APPL. 43856/2023 (Delay of 89 days in re-filing the appeal)**

HARPREET SINGH TONI Appellant

Through: Appearance not given

versus

SUKHBIR INDER SINGH BASRA & ORS. Respondents

Through: Appearance not given

**CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA**

DHARMESH SHARMA, J. (ORAL)

1. This order shall decide an appeal preferred by the appellant (defendant no.4 in the main suit) under Order XLIII Rule 1(R) of the Civil Procedure Code, 1908¹ assailing the impugned order dated 08.08.2022 whereby the Learned Trial Court was pleased to close the right of the appellant to file written statement in the pending suit in terms of Proviso to Rule 1 to Order VIII CPC.

2. First things first, the present appeal before us is preferred against the impugned order dated 08.08.2022 and CM APPL. No. 43856/2023 is moved seeking condonation of delay of 89 days in re-

¹ CPC



filing of the application.

3. It is submitted that the delay has occasioned since the file was misplaced in the chamber of the counsel due to ongoing construction work. Although the application is accompanied with an affidavit of the appellant, I am afraid no sufficient grounds are advanced for condonation of delay, and the appeal merits rejection for having been filed beyond the period of limitation.

4. Even otherwise, the present appeal is bereft of any merits. Shorn of all details, respondent no.1 has filed a suit for possession, mandatory injunction and declaration against the present appellant as well as respondent nos. 2 and 3 in respect of the property in question and vide order dated 12.07.2019, the learned Trial Court was pleased to close the right of the appellant to file a written statement. As the appellant/defendant no.4 failed to appear during the course of the proceedings, he has also been proceeded against ex-parte vide order dated 15.03.2022.

5. The case of the appellant is that he had never received any summons of the suit from the Court as the respondent no.1/plaintiff had given a wrong address as 134, Shop No.2, Guru Harkishan Nagar, Paschim Vihar, New Delhi-110087, whereas he has been residing at House No. 289, First Floor, Ambika Vihar, Paschim Vihar, New Delhi. It is submitted that as soon as he came to know about the pendency of the matter, he moved an application for setting aside the orders dated 12.07.2019 as well as 15.03.2022.

6. It would be expedient to reproduce the impugned order dated 08.08.2022 passed by the learned Trial Court, which reads as under:-



“Present: Sh. Amardeep Maini, Ld. Counsel for plaintiffs alongwith SPA, Sh. Karamjeet Singh.
None for defendant no.1.
Sh. Praful Singh Chandel, Ld. Counsel for Sh. Rishi Sood, Ld. Counsel for defendant no.2.
Ms. Rajni Sharma, Ld. Proxy Counsel for Sh. Praveen Goel, Ld. Counsel for defendant no.3.
Sh. Manoj Khatri, Ld. Counsel for defendant no.4 alongwith defendant no.4.

Vakalatnama filed on behalf of defendant no.4 on 27.07.2022

Ld. Counsel for plaintiff submits that he will file fresh SPA before the next date of hearing.

Ld. Counsel for defendant no.4 moved applications under Order 9 Rule 7 CPC and under Order 7 Rule 11 CPC. Copy supplied.

Arguments heard on application under Order 9 Rule 7 CPC.

Ld. Counsel for applicant /defendant no.4 submits that the defendant no.4 has not received any summons / notice by this Hon'ble Court till date since he is residing at House No.289, First Floor, Ambika Vihar, Paschim Vihar, New Delhi and the plaintiffs have mentioned his wrong address as 134, Shop No. 2, Guru Harkishan Nagar, Paschim Vihar, New Delhi-110087. Ld. Counsel further submits that now the defendant no.4 has come to know about the existence of present case and he wants to contest the case by filing written statement.

On the other hand, Ld. Counsel for plaintiff submits that defendant no.4 has deliberately avoided his appearance before this Court despite service of summons and present application is nothing but an attempt to delay the proceedings. He prays for dismissal of the application with costs.

Heard. Perused.

During arguments, defendant no.4 submits that he has shifted to the new address as mentioned in the application in the year 2019 itself.

As per record, defendant no.4 was served with summons on 04.10.2018 as it bears his signatures which are matching with his signatures as appended on the summons for 23.10.2018. The date of service is 04.10.2018. The said summons were issued on the address of defendant no.4 as mentioned in the plaint.

On 23.10.2018, defendant no.4 was directed to file written statement within the stipulated period. However, as per record, no written statement was filed till 12.07.2019 by defendant no. 1, 3 and 4 and accordingly, their right to file written statement was closed.

Vide order dated 15.03.2022, all defendants were proceeded ex-parte as none was appearing for the defendants.

Apart from claiming that the address as mentioned in plaint of defendant no.4 is incorrect and therefore he has not received the summons of the Court, no other plea has been taken by defendant no.4. However, said plea cannot be considered in view of the specific report of summons where signatures of defendant no.4 are appended with the date 04.10.2018.

Accordingly, I am satisfied that no ground is made out to set aside the order dated 12.07.2019 and 15.03.2022.

Hence, application moved on behalf of defendant no.4 for setting aside the order dated 12.07.2019 and ex-parte order dated 15.03.2022 stands dismissed and disposed off.”



7. A bare perusal of the aforesaid order would show that the plea of the appellant that he was never served with the summons of this suit at his correct address is palpably wrong. Learned Trial Court rightly observed that the summons was served upon defendant no.4 on 04.10.2018, which was bearing his signatures whereas he had shifted to the new address only in 2019. On a perusal of the relevant orders passed in the matter, it is evident that the appellant/defendant no.4 has been taking the Court for a ride and has attempted to derail the proceedings.

8. Before parting with this appeal, it is also borne out from the record that appellant/defendant no.4 was served with the summons on 04.10.2018 and no written statement was filed within the mandated period of 120 days in terms of Proviso to Rule 1 to Order VIII CPC which affords a period of 120 days to the defendant to file a written statement failing which his right to file a written statement stands defeated.

9. In view of the following discussion, I find that there is no illegality, infirmity or perversity in the impugned order dated 08.08.2022 passed by the Learned Trial Court.

10. The appeal is dismissed *in limine*. All pending applications also stand disposed of.

11. Copy of this Order be sent to Learned Trial Court for information and record.

DHARMESH SHARMA, J.

October 30, 2023/_{sp}