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

Date of decision: 07.12.2023

+ CM(M) 1263/2022 & CM APPL. 53034/2022

FAISAL ALI

..... Petitioner

Through: Mr. M. Asif and Mr. S. Azad,
Advocates

versus

SHAHJEHAN BEGUM

..... Respondent

Through: Mr. Saiful Islam, Advocate

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This Petition filed under Article 227 of the Constitution of India impugns the order dated 13.10.2022 passed by ADJ-02, South East, District Courts, Saket, New Delhi ('Trial Court'), in CS DJ 11941/2016, titled as **Shahjehan Begum v. Faisal Ali**, whereby the Trial Court dismissed the application filed by the defendant i.e., the Petitioner herein under Order IX Rule 7 of the Code of Civil Procedure, 1908 ('CPC') for setting aside of the order dated 21.07.2022, wherein the defendant was proceeded ex-parte.

1.1. The Petitioner herein is the defendant and the Respondent herein is the plaintiff before the Trial Court.

1.2. The suit for recovery of Rs. 52,42,400/- was filed by the Respondent



herein against the Petitioner herein on 16.12.2016. The Petitioner filed the Written Statement in the said suit on 16.03.2017.

1.3. The matter was set down for defence evidence (DE) which could not be recorded due to spread of Covid-19 pandemic. Thereafter the matter was listed on 21.07.2022 on which date the Trial Court closed the DE and defendant i.e., the Petitioner herein was also proceeded ex-parte. The counsel for the defendant Mr. Shahid Azad, Advocate in fact, stopped appearing before the Trial Court after 18.02.2020.

1.4. The Petitioner thereafter, filed an application on 26.09.2022 under Order IX Rule 7 CPC through a new counsel seeking setting aside of the ex-parte order dated 21.07.2022. The sole ground for explaining the non-appearance in the matter for two years was the negligence of the previous counsel i.e., Mr. Shahid Azad.

1.5. The above-said application of the Petitioner was dismissed by the Trial Court vide the impugned order.

2. The learned counsel for the Respondent states that the Petitioner has approached this Court with unclean hands.

2.1. He states that the substratum of this petition is that the erstwhile counsel, Mr. Shahid Azad representing the Petitioner herein before the Trial Court was negligent in prosecuting the matter and it was in these circumstances that the Petitioner remained unrepresented before the Trial Court from 18.02.2020 to 23.09.2022.

2.2. He states that the Petitioner has made false statements and mislead this Court and obtained the stay of the trial proceedings on 07.12.2022; in this petition.

2.3. He states that the order-sheet of 07.12.2022 records the presence of



the counsel Mr. Shahid Azad, Advocate for the Petitioner. He states, it is the same counsel, who was conducting the proceedings on behalf of this Petitioner herein before the Trial Court from 16.03.2017 until 18.02.2020.

2.4. He states, therefore, the entire premise set out in the petition is false and it is apparent that Mr. Shahid Azad, Advocate stopped appearing in the suit proceedings on the instructions of the defendant i.e., Petitioner herein himself. He states that even in the present petition the details of the e-mail address and the phone number of the Advocate mentioned are that of Mr. Shahid Azad, Advocate. He states that therefore, it is apparent that false pleas have been raised before this Court.

2.5. He states that the Respondent herein has filed the suit for recovery of money and the Petitioner deliberately by not participating in the proceedings has delayed the said proceedings.

3. In reply, learned counsel for the Petitioner in the first instance, expressed his ignorance with respect to appearance of Mr. Shahid Azad, Advocate before this Court on 07.12.2022. However, after perusing the order-sheet of the 07.12.2022, he confirms that Mr. Shahid Azad, Advocate is an acquaintance.

3.1. He states that he relies upon the contents of the petition for seeking setting aside of the impugned order.

3.2. He states that he is unable to explain the contradiction in the submissions recorded in the petition and the presence of Mr. Shahid Azad recorded in the order dated 07.12.2022 or the fact that the details of the office of Mr. Shahid Azad Advocate finding mention in the present petition.

4. This Court has considered the submissions of the parties and perused the record.



5. This Court has compared the details of Mr. Shahid Azad, Advocate appearing on the foot of written statement with the details given in the present writ petition. The submissions of the counsel for the Petitioner that the present petition has been filed with the e-mail and mobile no. details of Mr. Shahid Azad, Advocate is correct and borne out from the record. Mr. Shahid Azad, Advocate's appearance is also duly recorded in the order sheet of 07.12.2022.

6. It is therefore, writ large on the record that the present petition has been filed and presented by Mr. Shahid Azad, Advocate along with his colleagues whose name appear in the file.

7. However, this fact is material as it negates the submissions made in the petition that the Petitioner's erstwhile counsel Mr. Shahid Azad, Advocate was negligent and stopped appearing in the matter before the Trial Court after 18.02.2020.

8. In the petition, filed under the name of Advocates, Mohd. Asif and Shabbie Naseer a mirage was sought to be created that the petition has been filed by independent lawyers. Even during the course of hearing initially the counsel denied his knowledge of Mr. Shahid Azad, Advocate's association in the matter; however, subsequently he admitted his association with him. In fact, ironically in the appearance circulated to the Court Master the name of Mr. Shahid Azad, Advocate again finds mention.

9. In the facts of this case, it is therefore apparent that the Petitioner has come to the Court with unclean hands and that the Petitioner had full knowledge of the proceedings being conducted before the Trial Court and he has deliberately not participated in the said proceedings to cause prejudice to the Respondent herein; and delay the trial.



10. Accordingly, the present petition is dismissed and interim order stand vacated. The present petition is a gross abuse of process of law. This Court is refraining from imposing costs. However, the learned Trial Court is requested to expeditiously dispose of this suit on merits.

11. Pending application(s) stands disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 7, 2023/rhc/sk

Click here to check corrigendum, if any