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

% Date of decision: 15th December, 2023

+ **FAO 329/2023 & CM APPL. 64956/2023, CM APPL. 64955/2023**

ANIL KUMAR THAKUR

..... Appellant

Through: Mr. Pallav Saxena, Mr.
Diwaker Goel and Mr. Nipun
Sharma, Advs.

versus

PARKER H. CROFT JR.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The present appeal has been filed under Section 104 read with Order XLIII Rule 1 (d) Code of Civil Procedure, 1908¹, the appellant is assailing the impugned order dated 17.10.2023, whereby, the application of the appellant under Order IX Rule 3 of the CPC for setting aside the *ex-parte* judgment dated 25.11.2017 and decree dated 07.03.2022 in CS No. 9086/2016 titled as 'Parker H. Croft Jr v. Anil Kumar Thakur' was dismissed.

2. Suffice to state that the aforesaid suit was decided in favour of the plaintiff, entitling him to recover *mesne* profits of Rs.71,500/- per month w.e.f. 01.11.2008 with an increase of 10% every year with maximum increase of Rs.1,00,000/- per month till handing over the

¹ CPC



possession of the suit property i.e. property No. 17, Hauz Khas Enclave, New Delhi.

3. The appellant, who was arrayed as defendant in the suit and was in occupation of the tenancy premises, was proceeded against *ex parte vide* order dated 03.07.2017. The applicant/appellant in his application under Order IX Rule 13 of the CPC sought to canvass that he was unable to contest the same as his mother, Mrs. Narmada Thakur was suffering from various serious ailments such as diabetes mellitus, hypertension, coronary artery disease, cervical etc. since 2009 and was getting hospitalized repeatedly and was under continuous medical supervision.

4. The applicant/appellant then alluded to his own serious medical conditions stating that in 2016 he had fallen from stairs at the airport, as a result of which he suffered multiple fractures to his right shoulder arm, pelvic joints and spine trauma and thereafter underwent series of diagnosis, entailing visits to the specialists and ultimately in January 2020 he was diagnosed with cancer.

5. The respondent in the present appeal, who was the plaintiff in the main suit, in his reply opposed to the application and pointed out that the summons for settlement of issues were duly served upon the appellant, who failed to appear and contest the suit, as a result of which his defence was struck off *vide* order dated 21.08.2017 and was proceeded against *ex parte* w.e.f. 10.11.2017. It was pointed out that the appellant was putting appearance through his counsel from 2012 to 2016 in the High Court after which the suit was transferred to the District Court on change in the pecuniary jurisdiction of this Court.



6. The learned Additional District Judge-04, South District, Saket Courts, New Delhi² relied on the decisions in **G. P. Srivastava v. R.K.Raizada and Others**³; **Raj Kishore Pandey v. State of Uttar Pradesh and Others**⁴, **Rafiq and Another v. Munshilal and Another**⁵ and also decision in the case of **Balwant Singh (Dead) v. Jagdish Singh & Ors.**⁶, and made the following observations:

“8.From the record, it is clear that defendant although alleging various ailments on various different periods has not taken pain to explain day-to-day delay. The defendant has submitted various documents that show that he had various prevailing ailments but it does not show that how they stopped him from instructing his counsel to appear before the Court. Nowhere in the application has he tried to explain the reason behind nonappearance of his counsel in the aforesaid matter. In para 18 of his application, he states that after filing of written statement on 06.09.2012, he could not follow up the suit and instruct his counsel Mr. Ashok Kumar Mathur. It is not explained as to what caused cessation of communication between the defendant and the counsel. It is also noteworthy that the decree was prepared on 07.03.2022 almost after a period of 4 years whereas ex parte judgment was passed on 25.11.2007 as deficient court fee was yet to be paid by the plaintiff. It is beyond understanding of this Court as to how a pending matter could not be taken care by the defendant when he clearly knew that all he had to do was to instruct his counsel. There was no order in force that required his personal appearance as it being a civil matter. Wholesale blanket explanation covering the entire period of 5 years has been given which this Court finds unsatisfactory and which is hardly a sufficient cause for non-prosecution.”

7. Further, the learned ADJ finding that there was a delay of 311 days in filing of the application under Order IX Rule 13 of the CPC, referred to the decision in **Mahant Bikram Dass Chela v. Financial**

² ADJ

³ (2000) 3 SCC 54

⁴ (2009) 2 SCC 692

⁵ (1981) 2 SCC 788

⁶ (2010) 8 SCC 685



Commissioner, Revenue, Punjab Chandigarh & Ors.⁷ held that sufficient cause was not advanced for the condonation of delay under Section 5 of the Limitation Act, 1963. Furthermore, there was no merit in the application and hence the application under Order IX Rule 13 of the CPC was dismissed.

8. In the present appeal, learned counsel for the appellant is again espousing that the appellant had been prevented from appearing and from contesting the matter due to his continuous ill-health. This Court is of the view that the reasons given by the learned ADJ does not suffer from any patent illegality, perversity or incorrect approach in law. Merely, because the *ex-parte* judgment was passed on 25.11.2017 and formal decree was drawn on 07.03.2022, that by itself does not create any substantive legal rights in favour of the appellant to assail the impugned judgment/decreed.

9. In view of the foregoing discussion, I find no merit in the present appeal, and the same is dismissed *in limine*.

10. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

DECEMBER 15, 2023

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⁷ (1977) 4 SCC 69