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**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**% Date of decision: 4<sup>th</sup> December, 2023

+ FAO 130/2023 and CM APPL. 29364/2023 (Stay), CM APPL. 30865/2023 (Stay), CM APPL. 41785/2023 (For Directions)

LALITA SARKAR ..... Appellant

Through: Mr. Rishabh Kapur, Adv.

versus

KIRAN SETHI &amp; ANR. .... Respondents

Through: Mr. Aditya Kapoor and Mr. Mayur Singhal, Adv.

**CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)**

1. This is an appeal filed by the appellant under Section 104 read with Order XLIII Rule 1(d) of the Code of Civil Procedure, 1908<sup>1</sup> assailing order dated 01.05.2023 passed by learned ADJ-01 (South East), Saket Courts, New Delhi<sup>2</sup> in Misc. No. 964/2023, whereby the application by the appellant herein, under Order IX Rule 13 CPC was dismissed.

2. Having heard the learned counsel for the parties, at the outset, I find that the present appeal is bereft of any merits. Briefly stated, a lease agreement dated 04.10.2019 was executed between the respondents in the present matter with Mr. Ayan Sarkar, the husband of the appellant with respect to premises in question property bearing No. E-24, First Floor, Amar Colony, Lajpat Nagar-IV, New Delhi-110024, was leased out at a monthly rent of Rs. 29,000/- for three

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<sup>1</sup> CPC

<sup>2</sup> ADJ



years with stipulation to pay increased rent @Rs. 30,000/- w.e.f. 01.10.2020 and lastly to be increased to Rs. 31,000/- w.e.f. 01.10.2021. It appears that the husband of the appellant fell in arrears and subsequent to issuance of demand notice, a suit for possession was filed by the respondents, which was not contested and resultantly an *ex parte* decree was passed in favour of the respondents/landlords vide detailed judgment dated 21.02.2023.

3. It appears that the respondents disconnected the supply of electricity to the tenanted premises upon which the appellant made certain inquiries and she pleads that it was only then that she came to know about the *ex parte* judgment dated 21.02.2023. Thereafter, she filed an application under Order IX Rule 13 CPC, which came to be heard by the learned ADJ and the following order was passed:

“Vide present application, it is submitted on behalf of applicant (who was defendant no.2 in the main suit bearing CS No.418/2022) that summons of the suit were never received by her and that plaintiffs and husband of applicant namely, Sh. Ayan Sarkar (who was defendant no.1 in the main suit) used to restrain people coming to meet the applicant. It is further submitted by applicant that she is living separately from her husband for the last one and half years and various proceedings under D.V. Act and Section 125 Cr.PC are pending between them. It is further submitted that an FIR No.32/2021 U/s 498A/406 IPC, PS Women Cell is also registered against defendant no.1 by her. It is further submitted that the applicant has no alternate accommodation other than the subject property bearing no.E-25, First Floor, Amar Colony, Lajpat Nagar-IV, New Delhi-110024 and has a prima facie case for setting aside ex-parte judgment and decree dated 21.02.2023 passed against her.

The present application under Order IX Rule 13 CPC is strongly opposed on behalf of respondents who submit that judgment and decree date 21.02.2023 was passed on merits by this Court after perusing the material on record and hearing rival submissions of both the parties. It is submitted that defendant no.1 contested the present suit and the applicant/defendant no.2 willfully not joined the proceedings and she was proceeded against ex-parte



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vide order dated 01.08.2022. It is further submitted that prayer made in the present application under Order IX Rule 13 CPC is contrary to record as the applicant was clearly served by way of ordinary summons as well as registered post which noted that applicant/defendant no.2 knowingly refused to accept the summons of the suit. It is further submitted that plaintiffs themselves, are senior citizens who are dependent on rental income from the suit property. It is argued that no rent is being paid by applicant or her husband since March 2022 and yet she continues to occupy the suit premises causing loss and annoyance to plaintiffs. It is thus, prayed that the present application under Order IX Rule 13 CPC should be dismissed with heavy costs.

Arguments heard. Record perused.

Suffice it to say, Order IX Rule 13 CPC permits the Court to set aside an ex-parte decree against a defendant on following two possibilities namely :-

- (i) *If the applicant satisfies that summons were not duly served upon him; and*
- (ii) *If the applicant satisfies the Court that he was prevented by any sufficient cause from appearing when the suit was called on for hearing.*

So far as point (i) is concerned, it is clear from the record of the case that summons of the main suit bearing CS-418/2022 were issued against applicant/defendant no.2 vide order dated 04.06.2022 and service report dated 05.07.2022 of the Process Server clearly reflects that applicant/defendant no.2 was found at the given premises who refused to accept the summons. Moreover, summons sent to the applicant/defendant no.2 by way of registered post also received back with the remarks on envelope that applicant/defendant no.2 knowingly refused to accept the summons. Nothing substantial could be brought on record on behalf of applicant/defendant no.2 to suggest otherwise or to rebut the presumption of service under Section 27 of General Clauses Act against her. Thus, the applicant/defendant no.2 miserably failed to satisfy the point (i) that summons were not duly served upon her in the main suit.

With respect to point (ii), no sufficient cause could be disclosed by the applicant which prevented her from appearing in the Court when the suit was called up for hearing.

**In these circumstances, I am not inclined to allow the present application under Order IX Rule 13 CPC and the same stands dismissed for being without merit.**

The miscellaneous file be consigned to record room.”



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4. The main grievance of the appellant is that summons for settlement of issues were never served upon her in terms of Order V Rules 17 and 18 of the CPC. It is also vehemently urged that the matrimonial relationship between her and her husband (the original tenant) became sour and this led to filing of a spate of litigation between her and her husband, which matters are pending in other competent courts.

5. It is also brought out during the course of arguments that the rent has not been paid by the contractual tenant i.e., husband of the appellant since February, 2022. *Ex facie* the impugned order dated 01.05.2023 does not suffer from any illegality, perversity, or incorrect approach in law. It is clearly brought out in the impugned order that the appellant was duly served with the summons of the suit in question, despite which the appellant failed to appear and file written statement. Consequently, her defence was struck off and eventually *ex parte* judgment and decree was passed.

6. During the course of arguments, learned counsel for the appellant submitted that his client is in no position to pay the arrears of rent and/or continue to pay the rent on a month to month basis. It was not disputed that demand notice was duly served upon the respondent No.2 i.e. the appellant in the present appeal, and mere fact that the appellant is having marital discord with her husband, does not legally bind the respondents/landlords to allow her and her children to continue to reside in the tenancy premises without payment of rent. Evidently, the appellant does not have any *locus standi* to file the present appeal since she was not the contractual tenant. Unfortunate as





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it may look, no sufficient grounds or cause have been advanced by the appellant to entitle her to any relief by this Court.

7. Hence, the present appeal is dismissed.
8. The pending applications also stand disposed of.

**DHARMESH SHARMA, J.**

**DECEMBER 04, 2023**

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Signature Not Verified

Digitally Signed By: PRADEEP  
KUMAR VATS  
Signing Date: 06.12.2023  
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