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

+ **FAO 125/2024**

ANIL SAXENA

..... Appellant

Through: Mr. Ayush Kumar, Adv. with
appellant in person.

versus

**SH. CHAND KISHAN RAZDAAN SINCE DECEASED
THROUGH L.RS**

..... Respondent

Through: Mr. Amitabh Chaturvedi, Mr. Ankit
Monga, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

10.04.2024

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CM APPL. 21643/2024—Exp.

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

FAO 125/2024

3. The present first appeal under Order XLIII Rule 1(c) read with Section 104 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') has been preferred impugning the order dated 10.01.2024 passed by learned ADJ-01, Shahdara, Karkardooma Courts, Delhi in MISC. NO. DJ-506/2022 titled as "Anil Saxena (Senior Citizen Case) vs. Chand Kishan Razdaan" thereby dismissing the application under Order IX Rule 9 read with Section 151 CPC for setting aside the order dated 06.08.2022.
4. Issue notice.



5. Mr. Amitabh Chaturvedi, learned counsel appears on advance notice and accepts notice on behalf of the respondent.
6. Submissions addressed.
7. It is submitted on behalf of the appellant that the appellant could not appear before the learned Trial Court on a single date of hearing i.e., on 06.08.2022 when due to his non appearance, the suit was dismissed in default as well as for non-prosecution. It is submitted that on the previous date of hearing, the appellant had appeared before the learned Trial Court and had made a request to engage a fresh advocate as his evidence was to be recorded. Thereafter the matter was adjourned for 06.08.2022 and the learned Trial Court on the very same date had dismissed the suit in default. It is further submitted that on the said date of hearing, the appellant met with a minor accident outside the court complex and thus could not appear before the learned Trial Court. It is submitted that when the appellant came to know that the suit has been dismissed in default without wasting any time filed an application under Order IX Rule 9 read with Section 151 CPC on 22.08.2022, which was dismissed by the learned Trial Court by not considering the submissions and the circumstances made before the court. It is submitted that the learned Trial Court failed to consider the submissions that the appellant had sustained injury in the accident which he had met with outside the court complex as no medical prescription slip of his treatment was placed on record. It is submitted that otherwise the appellant had been diligently pursuing his case since its institution.
8. The learned counsel for the respondent vehemently opposes the submissions made on behalf of the appellant and submits that the appellant had filed a suit for specific performance on oral agreement in the year 2009.



The issues were framed in the year 2010 and the appellant being the sole witness of his case has tendered his evidence affidavit in the year 2011 and since then, the cross examination of the appellant has not been conducted and the suit is lingering on for 13 years due to the fault on the part of the appellant.

9. In rebuttal, learned counsel for the appellant submits that non-recording of the evidence since 2011 to 2024 cannot be solely attributed to the appellant as in between the respondent had expired and his legal heirs had been brought on record and moreover, the Courts were not normally functioning during the covid time, also the suit was dismissed on the first default of the appellant. Further appellant stated that he had been pursuing his case diligently.

10. It is not disputed that on the previous date of hearing i.e., 02.03.2022 the appellant was present in person before the learned Trial Court and the matter was fixed for PE. Adjournment was requested on behalf of the appellant as he wanted to engage a new counsel and the said adjournment was not opposed and the case was listed for 06.08.2022. On the said date of hearing due to the non-appearance on behalf of the petitioner, in the post lunch session, the learned Trial Court had dismissed the suit in default as well as for non-prosecution as neither the appellant nor any witness was present on his behalf.

11. Having considered the above submissions as well as the record, additionally the fact that it was the first occasion when the appellant defaulted in appearing before the learned Trial Court the order dated 06.08.2022 is set aside. The suit be restored to its original number. However, the learned Trial Court to expedite the disposal of the suit as the



suit is stated to have been instituted in year 2009.

12. Parties to appear before the learned Trial Court on 18.05.2024.

13. With the above observations, the appeal stands allowed.

SHALINDER KAUR, J

APRIL 10, 2024

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