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

% ***Date of decision: 13th August, 2024***

+ **FAO 263/2024 & CM APPL. 46341-46342/2024**

LEELADHAR MISHRAAppellant

Through: Mr. S.G. Goswami with Ms. Pavitra
Veer Singh, Mr. Shinu Gupta and
Mr. Vikram Singh, Advocates.

versus

VINOD KUMAR SHARMARespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. This is an appeal filed by the appellant Leeladhar Mishra (defendant before the learned Trial Court).
2. He is aggrieved by dismissal of his application moved under Order IX Rule 13 read with Section 151 CPC.
3. It is noticed that respondent Vinod Kumar Sharma had filed a suit for recovery of possession, damages/mesne profit and permanent injunction against the defendant.
4. In such suit, he claimed himself to be the absolute and lawful owner of the suit property situated at Bihari Colony, Shahdara, Delhi-32. Defendant was claimed to be his tenant with respect to the ground floor as well as first floor of said property. The total monthly



rent was stated to be Rs.5,500/- with effect from 01.01.2019, excluding water and electricity charges. As the defendant neither paid the rent and nor even vacated the tenanted premises and since one cheque issued by him also returned unpaid for the reason 'insufficient funds', the aforesaid suit was filed.

5. The summons were served upon the defendant on 31.08.2019 but since he neither appeared before the learned Trial Court nor filed his written statement, his right to file written statement was closed on 21.12.2019 and he was proceeded against ex-parte.

6. Eventually, the decree was passed on 14.12.2022.

7. The appellant i.e. the defendant moved an application under Order IX Rule 13 read with Section 151 CPC and in his such application, he claimed that he learnt about the decree in question only on 25.08.2023 when some police personnel along with Court's staff had come to his house. In such application, he prayed that the ex-parte decree may be set aside, while supplementing to abide by all terms and conditions to be imposed by the learned Trial Court.

8. The aforesaid application has been dismissed by the learned Trial Court vide impugned order dated 01.06.2024.

9. It is noticed that when said application was taken up by the learned Trial Court, it was conscious of the fact that he was duly served on 31.08.2019 and despite such service, he did not appear before the learned Trial Court. When the learned Trial Court showed him such



summons which even contained his signatures, the defendant admitted his signatures on such summons.

10. This clearly goes on to indicate that he was not only duly served but was also fully aware about the filing of the suit in question. This goes contrary to the stand taken by him in his above application moved under Order IX Rule 13 CPC wherein he has rather contended that he learnt about the Court case only on 25.08.2023.

11. The learned Trial Court while acknowledging the limited scope of appreciation under Order IX Rule 13 CPC observed that any such applicant was required to show that either he was not served or if served, he was prevented by any sufficient cause from appearing when the suit was called on for hearing.

12. In the case in hand, unfortunately, in view of the admission made by the applicant himself before the learned Trial Court, this Court is in no position to come to his rescue even if he claims that he has a very good case on merits.

13. Finding no substance in the present petition, the same is hereby dismissed *in limine*.

14. Copy of the order be given Dasti under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

AUGUST 13, 2024
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