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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 63/2023, CM APPL. 12607/2023 & CM APPL. 12610/2023**

GEETHAMMA & ANR.

.....Appellants

Through: Mr. Jojo Jose, Mr. Sunitba
jJohn, Mr. Navaneeth K.K., Mr.
Nambi Rajan L., Mr. Faheem
A.P.M., Advs.

versus

MUTHOOT FINANCE LIMITED & ORS.Respondents

Through: Ms. Dipika Prasad, Adv. for R-
1,4,6 and 7
Ms. Megha Saroa, Adv. for R-5
Mr. Janak Raj Ambavat, Adv.
for R-3

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

21.04.2025

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1. The hearing is being conducted through hybrid mode.
2. The appellants are preferring the instant appeal under Section XLIII Rule 1(c) of the Code of the Civil Procedure, 1908 ['CPC'], assailing the impugned order dated 04.07.2022 passed by the learned ADJ, South District, Saket Courts, New Delhi, whereby their application under Order IX Rule 9 of the CPC for restoration of the suit bearing CS No. 7906/2016 was dismissed.
3. Having heard the learned counsels for the parties present and on perusal of the record, this Court has no hesitation in holding the impugned order is unconscionable and not sustainable in law.
4. In short, the appellants have instituted a suit seeking



compensation on account of the death of deceased Anumol E.V., who was working in the respondent No.1 company, in a firing incident by a Security Guard. It appears that the suit was dismissed for non-appearance of the appellants on 23.09.2021 in terms of Order IX Rule 8 of the CPC, as on that day, appearance had been put on behalf of the respondents through video conferencing.

5. The applicants/appellants preferred an application under Order IX Rule 9 of the CPC on 29.10.2021 and upon hearing, the learned Trial Court dismissed the aforesaid application. The operating part of the impugned order reads as under:-

“2. The arguments qua the aforesaid application were heard, on 07.08.2022. During the hearing of arguments, the Ld. Advocate for the applicants had submitted that the aforesaid application should be allowed by this Court because due to mistake of the Ld. Advocate for the applicants for not recording the date of 23.09.2021, none had appeared on behalf of the applicants in CS No. 7906/2016, on 23.09.2021, *Per contra*, the Ld. Advocate for the non-applicants had submitted that the aforesaid application should be dismissed by this Court because along with the aforesaid application, the Ld. Advocate for the applicants has not filed his diary, as proof of not recording the date of 23.09.2021 and because the record of CS No. 7906/2016, reflects that the applicants, who were absent w.e.f. 03.10.2020, were not diligently pursuing the said suit.

3. After perusing the record of the file of CS No. 7906/2016 and considering the submissions made by the Ld. Advocates for the parties, on 07.06.2022, I find that the aforesaid application is liable to be dismissed (a) because along with the aforesaid application, the applicants have not filed the diary of the Ld. Advocate for the applicants, reflecting that he had erred by not recording the date of 23.09.2021; (b) because the judgments of the Hon'ble High Court of Delhi in Swaran & Anr. v. Indu Wahi & Ors., 2017 SCC OnLine Del 1050 and Sanjay Kalra V State, 2021 SCC Online Del 590, mandate this Court to not accept the plea of 'mistake advocate' at the mere asking of a party; (c) because the judgment of the Hon'ble High Court of Delhi in Jal Gopal Goyal v. Bishen Dayal Goyal, 2007 (5) AD (Delhi) 690, required the applicants to keep a track of CS No. 7906/2016, independent of the conduct of their Advocates; (d) because the record of CS No. 7906/2016 reflects that despite service of Court notice upon Sh. Jojo Joseph, Ld. Advocate for the applicants, on 27.02.2021, the applicants had



not bothered to diligently pursue CS No. 7906/2016 and (e) because the aforesaid application is barred by law of limitation as provided under Section 3 read with Article 122 of the Schedule to the Limitation Act, 1963.

4. In view of the aforesaid reasons, the application identified in paragraph 1 of this Order is dismissed. After completion of necessary formalities by the Ahlmad, the file shall be consigned to the record room.”

6. Upon a careful perusal of the aforesaid order, it is manifest that the learned Trial Court has taken a hyper technical view of the matter. There was no observation that the appellants were delaying the disposal of the suit in any manner. In fact, it is borne out from the record that the appellants have already concluded their evidence and the matter was listed on 23.09.2021 for recording of evidence of the respondent/defendant, and no witnesses were summoned or were present on that day.

7. Merely because the learned counsel for the appellants did not produce his diary and failed to substantiate that the date of hearing was wrongly noted, by itself, was not a sufficient ground to discard the grounds espoused for restoration of the suit dismissed in default. There was no inordinate delay in filing the application for restoration of the suit either. The powers under Order IX Rule 9 of the CPC for determining sufficient cause have to be exercised in a judicious manner. The learned trial court woefully failed to take a holistic view of the matter. Evidently, the impugned order operates very unjustly and harshly upon the appellants, who otherwise have been diligently pursuing their legal remedies in law.

8. Accordingly, the impugned order dated 04.07.2022 passed by the learned Trial Court is hereby set-aside. The suit is directed to be restored to its original number and position.



9. The parties shall appear before the Trial Court for further proceedings in accordance with law, on 19.05.2025.

10. The present appeal alongwith pending applications are disposed of.

DHARMESH SHARMA, J.

APRIL 21, 2025/sp/ss