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

+ **CM(M) 130/2025**

**PRIYANKA TIWARI**

.....Petitioner

Through: Mr. Triloki Pandit, Adv.

versus

**HARI OM TANDON**

.....Respondent

Through: Mr. B.K. Pandey, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**ORDER**

**25.02.2025**

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**CM(M) 130/2025 & CM APPL. 3918/2025 (stay)**

1. The present petition under Article 227 of the Constitution of India impugns the order dated 11.09.2024, passed by the learned District Judge in Suit No. CS DJ ADJ 329/2019, titled as "*SH. HARI OM TANDON Vs. SH. MUKESH KUMAR & ANR*", whereby the application filed by the petitioner under Order IX Rule 7 CPC has been dismissed.
2. Petitioner is the defendant in the suit for recovery filed by the plaintiff.
3. Petitioner filed her written statement before the learned Trial Court.
4. The learned counsel for petitioner submits that petitioner could not appear before the learned Trial Court on date fixed i.e., 17.05.2025 because she was in judicial custody in case bearing FIR No. 0176/2018 under Section 420/467/468/120-B/34 IPC, P.S. Dwarka, North, New Delhi.



5. The learned counsel for respondent submits that even after being released from the jail, petitioner did not appear on 03.09.2024 as well. He further submits that petitioner appeared as late as on 11.09.2024 and, therefore, there is no justified explanation for the delay in filing the application under Order IX Rule 7 CPC.

6. The certificate issued by the Office of Superintendent, Central Jail No.6, Tihar, New Delhi, shows that petitioner was in judicial custody in case cited above, as per following details:-

- “1. 16.08.2022 to 03.04.2023 (As undertrial)
2. 24.04.2023 to 20.05.2023 (As undertrial)
3. 19.08.2023 to 30.07.2024 (As undertrial)”

7. According to the learned counsel for petitioner, petitioner was released on interim bail with effect from 04.04.2023 to 23.04.2023 on account of demise of her father and was again granted interim bail for a period between 21.05.2023 to 18.08.2023 on the medical ground of her husband.

8. Admittedly, as per certificate issued by the jail authority, the petitioner was in judicial custody on 17.05.2024 and, therefore, could not have appeared before the learned Trial Court.

9. Rather than taking justice oriented approach, the learned Trial Court adopted a hyper technical approach in dismissing the application on the ground that petitioner could have appeared on 03.09.2024.

10. In my considered view, petitioner has been able to show justified cause for non-appearance on 17.05.2024 and, therefore, that being so, the ex-parte order dated 17.05.2024 is liable to be set aside.



4. Petition is accordingly allowed and the impugned order dated 11.09.2024, as also, the order dated 17.05.2024 by which petitioner was proceeded ex-parte is set aside.

**RAVINDER DUDEJA, J**

**FEBRUARY 25, 2025/sky/r**