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

% ***Date of Decision: 27th March, 2025***

+ **CM(M) 406/2023 & CM APPL. 12021/2023**

BHUPINDER CHADHA & ANR.Petitioners

Through: Mr. Joby P. Varghese with
Mr. Jagmeet Singh Randhawa and
Mr. Aby P. Varghese, Advocates.

versus

ASHOK KUMAR KHURANARespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. None appears on behalf of respondent/plaintiff.
2. It needs to be highlighted that in the present matter, the respondent i.e. plaintiff was duly served and despite service, there is no appearance from his side. When this matter was taken up on 24.08.2023, it was cautioned that if there was no appearance from the side of respondent on the next date of hearing, the matter would be decided in his absence.
3. Thereafter also, there has been no appearance from the side of respondent. Today also, the situation remains the same.
4. Fact, however, remains that the issue involved in the present petition is very short.
5. Petitioners are defending a summary suit filed under Order XXXVII CPC and plaintiff (respondent herein) seeks recovery of Rs.4 lacs with cost and interest.
6. After institution of the abovesaid suit, the process was directed to be



issued to the defendant.

7. In view of the process reports received, the learned Trial Court ordered fresh issuance of summons and in this regard, reference be made to order dated 30.05.2022, which reads as under:-

“Report over process dated 24.09.2021 and 12.10.2021, as per which the defendants remained unserved.

*Issue fresh summons of the suit in **Form 4 Appendix B CPC** to the defendants through all modes including e-mode on filing of PF/RC-AD/ speed post/ courier within 7 days. Be given dasti as well.*

*Be put up for further proceedings on **16.07.2022.**”*

8. Thereafter, the matter was taken up on 05.09.2022 and on that date, the Court was conscious of the fact that though the appearance had already been put in by defendant, it, relying upon the same process reports dated 24.09.2021 and 12.10.2021, held that the appearance was belated and, therefore, the matter was fixed for pronouncement of judgment.

9. Order dated 05.09.2022, which is now under challenge, reads as under:-

“It is 12.30 PM .

Report over process dated 24.09.2021 and 12.10.2021 perused, as per which defendant has refused to accept service.

Defendant no.1 has moved an application on 22.07.2022 for entering appearance. Same is beyond the statutory period of limitation.

Submission of counsel for plaintiff heard.

*List the matter for pronouncing Judgment on **08.09.2022.**”*

10. It is, obviously, difficult to reconcile the abovesaid two orders i.e order dated 30.05.2022 and order dated 05.09.2022.

11. Once the learned Trial Court had come to conclusion that defendant was not served, in view of the process reports dated 24.09.2021 and



12.10.2021 and issued fresh summons even, it was not appropriate for the Court to have relied upon the same process reports and then to hold that the defendant had rather refused to accept service.

12. Learned counsel for the petitioner/defendant submits that in terms of order dated 30.05.2022, the summons were issued afresh and, such summons were duly received by defendant on 12.07.2022 and, based on such service, the appearance was put in before the learned Trial Court on 22.07.2022.

13. Moreover, according to learned counsel for the defendant, there was no occasion for the defendant to have received or refused process dated 24.09.2021 and 12.10.2021 as defendant was out of country and had returned back only on 15.10.2021 and in order to demonstrate the same. Copies of his passport and visa have been annexed with the present petition.

14. Be that as it may, fact remains that the learned Trial Court should not have held that the appearance had been entered belatedly, while relying upon process reports dated 24.09.2021 and 12.10.2021 which, otherwise, stood discarded. The Court should have rather seen the process report, received pursuant to its order dated 30.05.2022.

15. Admittedly, such process was duly received by defendant and pursuant to that only, defendant had put in his appearance.

16. This Court is also mindful of Order XXXVII Rule 3(7) CPC, by virtue of which, the Court, on sufficient cause shown by defendant, can excuse the delay in entering appearance.

17. In view of the above, the present petition is allowed and the appearance entered by defendant before the learned Trial Court, which is dated 22.07.2022, is taken on record.

18. The next date before the learned Trial Court is stated to be 15.04.2025.



19. Learned Trial Court would be at liberty to proceed further with the matter, in terms of provisions contained under Order XXXVII CPC.
20. The petition, along with pending application, stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 27, 2025
st/js