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

% ***Date of Decision: 21th March, 2025***

+ **CM(M) 533/2025 & CM APPL. 16690-16692/2025**

NARESH KUMAR

.....Petitioner

Through: Mr. Ravi Kapoor, Mr. Dhruv Chawla,
Ms. Aditi Singhal and Ms. Shreya,
Advocates.

versus

SHASHI KIRAN AMAR & ANR.

.....Respondents

Through: Ms. Archana Jain and Mr. Arjav Jain,
Advocates for R-1.
Mr. Gautam Dhamija, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner has filed a suit seeking declaration and injunction.
2. Defendant No. 2 was proceeded against *ex parte* in terms of order dated 07.09.2022.
3. Subsequent to such order, she moved an application under Order IX Rule 7 CPC. Such application was taken up by the learned Trial Court on 11.11.2024 and was allowed.

4. The relevant portion of the abovesaid order reads as under:

“ Law on the Order IX Rule 6 CPC has been succinctly summarized by our Hon'ble High Court in 'Lotus International vs Chaturbhujadas Kamani Textiles (P) Ltd.', 1996 SCC Online DEL



876. In Para 23 of the judgment, Hon'ble Delhi High Court has observed:

“(23). From the aforesaid rulings the following principles can be summarized. Where the Court has decided to proceed ex parte under Order 9 Rule 6 CPC, it means that it has merely decided to go ahead with the case in the absence of the defendant and the situation is not akin to one where an ex parte decree or order is passed against the defendant. The Court merely records in its minutes that it is proceeding forward in the absence of the defendant. If thereafter the Court has taken some steps in the trial, it is open to the defendant to come forward at a later stage and file an application under Order 9 Rule 7 to restore the status quo ante obtaining before he was set ex parte. If good cause is shown for his absence, the Court would allow the application thus relegating him to the same position which obtained before he was set ex parte. But, in case good cause is not shown by the defendant for his earlier absence and the application under Order 9 Rule 7 CPC is rejected, it is still open to the defendant to join and participate in the proceedings at a later stage accepting the events which have taken place in the interregnum, as they stand”.

In light of the fact that suit is at its initial stage and issues are yet to be framed, this court considers it fit to allow this application and permit the defendant no.2 to participate in the proceedings from now onwards and restore it to the 'status quo ante' subject however to the payment of cost of Rs.5,000/- to be deposited in DLSA, South, Saket Courts.

Application is disposed of accordingly .”

5. The learned counsel for the plaintiff/petitioner submits that it is not very apparent from the above said order, whether the Court has permitted the defendant No. 2 to join the proceedings from that day onwards only or



whether the *status quo ante* has been restored. He submits that both the phrases have, somehow, been used in the abovesaid order in penultimate paragraph as extracted above and, therefore, the above said aspect requires clarification. He submits that if the *status quo ante* is restored, then defendant No. 2 would rather submit written statement as well which may prejudice plaintiff as according to them, no sufficient cause is shown. However, in case the order merely permits him to participate in the proceedings from subsequent stage, on account of her being not been able to show a good cause, then the petitioner would have no objection to such order.

6. Mr. Gautam Dhamija, learned counsel of such defendant (respondent No. 2 herein) appears through video conferencing. Learned counsel for defendant No. 1 (respondent No. 1 herein) is also physically present.

7. Learned counsel for the defendants, without prejudice to their rights, have no objection if the learned Trial Court is requested to clarify the abovesaid aspect. They also have no objection if the matter be referred for Mediation and a Senior Mediator is appointed.

8. In view of the abovesaid facts and paradox appearing in the order, the present petition is disposed of with direction to the learned Trial Court to pass order afresh on the abovesaid application moved by defendant No. 2 under Order IX Rule 7 CPC.

9. Needless to say, the Court would pass order without getting influenced by any of the observation appearing in the present order, *albeit*, shall clarify whether it had found the sufficient cause for condoning delay or not.

10. Additionally, with the consent of learned counsel for both the parties, the matter is also referred to Delhi High Court Mediation and Conciliation



Centre with request to learned Organizing Secretary to appoint a Senior Mediator.

11. The parties would appear before the Mediation Centre on 04.04.2025 and the outcome thereof may be apprised, directly, to the concerned Court of learned District Judge -04, South District, Saket Courts, New Delhi, where Civil Suit i.e. CS DJ 224/21 is pending adjudication.

12. The present petition, along with pending applications, stands disposed of.

(MANOJ JAIN)
JUDGE

MARCH 21, 2025/PB/js