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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 78/2025**

JAYA DEVI

..... Appellant

Through: Mr. D B Yadav, Mr. Suraj
Yadav & Mr. Satya Vijay
Yadav, Advs.

versus

BHUPESH KUMAR & ANR.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

28.03.2025

1. The hearing is being conducted through hybrid mode.

CM. APPL. 18490/2025 – EXMP.

2. Allowed, subject to all just exceptions.

3. Application stands disposed of.

CM. APPL. 18492/2025 – DELAY OF 312 DAYS IN FILING

4. This application has been moved on behalf of the applicant/appellant seeking condonation of delay of 312 days in filing the present appeal.

5. For the reasons stated in the application, the application is allowed and delay of 312 days in filing the present appeal is condoned.

6. The application stands disposed of.

FAO 78/2025 & CM. APPL. 18491/2025

7. The appellant, who was the defendant in the suit pending before the learned Trial Court, is assailing the impugned order dated 06.02.2024 passed by the learned District Judge (Commercial Courts),



North-East, Karkardooma Courts, Delhi [“**Trial Court**”], whereby her application under Order IX Rule 13 of the Code of Civil Procedure, 1908 [“**CPC**”], read with Section 151 of the CPC was dismissed.

8. None appeared on behalf of the respondent/plaintiff/Decree Holder despite sending advance notice.

9. In a nutshell, the respondents/plaintiffs filed a Civil Suit seeking permanent injunction and specific performance of Agreement to Sell dated 14.02.2021 against the appellant/defendant. It appears that since the summons for settlement of issues were duly served upon the appellant/defendant, and she did not put any appearance either in person or through her counsel, the suit was decreed *ex parte* vide judgment/decreed dated 12.09.2022.

10. The appellant/defendant filed an application under Order IX Rule 13 of the CPC read with section 151 of the CPC before the learned Trial Court for setting aside the *ex parte* decree. It would be apposite to reproduce the reasons which prevailed in the mind of the learned Trial Court while dismissing the application: -

“5. Order IX Rule 13 CPC provides that if the defendant satisfies the court that (i) the summons was not duly served (ii) or, that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree upon such terms as it thinks fit.

6. Perusal of record shows that firstly the summons for settlement of issues in CS no. 146/21 were directed to be issued vide order dated 04.08.2021 on filing of PF, RC as well as through WhatsApp and email. The Registered Cover was returned back with the report 'Refusal' and summons sent through WhatsApp returned back with the report that daughter of the defendant namely Kamlesh was informed about the summons and a photo of the summons was also forwarded to the defendant on WhatsApp. However, vide order dated 01.10.2021, Ld. Predecessor directed that fresh summons be



issued to defendant returnable on 02. 11.2021. Perusal of record further goes to show that the process server reported that on 09.10.2021 he went to the given address, where he inquired about Jaya Devi, on which one lady met him and disclosed her name as Jaya Devi and told him that she will not receive the summons, but will appear in the court on date fixed. Process sent through speed post for 02.11.2021 also shows that the postman recorded remarks on the envelope “refused”. Despite that, Ld. Predecessor vide order dated 02.11.2021 further directed that in the interest of justice, let a court notice be issued to defendant, but the same also received back with the report “Refused to accept”. These reports clearly shows that summons as well as court notice were duly served upon the defendant/applicant.

7. Applicant has filed an application u/s 151 of CPC alongwith photocopies of three electricity bills and perusal of same shows that these electricity bills have been issued in the name of different persons and with regard to different part of the property no.138, Gali no.1, Bhajanpura i.e. 1st floor, Part-B and B/4-A. These bills in no manner shows that there is any ambiguity in the address of applicant/defendant. The report of process server on summons as well as court notice shows that the applicant met with the process server and disclosed her name as Jaya Devi, but refused to accept the process. Applicant has not mentioned on which date she came to know about the ex-parte order and judgment dated 02.12.2021 and 12.09.2022 respectively for condonation of delay upto 232 days. Applicant has also not shown any sufficient cause for her non appearance when the suit was called on for hearing despite receiving the summons as well as court notice regarding the suit i.e. CS No.146/21. In view of above, both the applications i.e. (1) under Order IX Rule 13 r/w Section 15 1 CPC dated 09.05.2023 for setting aside/recalling the judgment dated 12.09.2022 and order dated 02.12.2021 and (2) under Section 5 of Limitation Act dated 09.05.2023 for condonation of delay of 232 days in filing the application under Order IX Rule 13 CPC are devoid of any merit and same are dismissed accordingly.”

11. On a careful perusal of the aforesaid order dated 06.02.2024 and the record, this Court is not persuaded to believe that the summons were not duly served upon the applicant. The appellant fails to satisfy this Court that the service reports produced on the record were incorrect or fabricated in any manner. There is taken no plea on an



affidavit that neither she nor any member of her family was not present when the summons were served on different dates, as recorded in the impugned order. There is no assertion as to when she came to know of the passing of the *exparte* judgment/decreed either.

12. Thus, this Court is unable to find any illegality, perversity or incorrect approach adopted by the learned Trial Court in dismissing the application. Hence, the present appeal is dismissed.

13. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MARCH 28, 2025

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