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

+ **FAO 101/2025**

CHANDER PRAKASH

.....Appellant

Through: Mr. Baldev Singh, Mr.
Divyansh Thakur and Mr.
Rishab Singh, Advs.

versus

NAND KISHORE BARUA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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17.04.2025

1. The hearing is being conducted through hybrid mode.

CM APPL. 22290/2025 (Exemption)

2. Allowed, subject to all just exceptions.

3. The application stands disposed of.

CM APPL. 22292/2025 (Delay of 49 days in re-filing)

4. For the reasons stated in the application, the present application is allowed and the delay of 49 days in re-filing the present appeal is condoned.

5. The application stands disposed of.

CM APPL. 22291/2025 (Delay of 62 days in filing)

6. For the reasons stated in the application, the present application is allowed and the delay of 62 days in filing the present appeal is condoned.

7. The application stands disposed of.

FAO 101/2025 and CM APPL. 22289/2025 (Stay)

8. The present appeal is preferred by the appellant under Order



XLIII Rule 1(D) read with Sections 104 and 151 of the Code of Civil Procedure, 1908 [‘CPC’], thereby assailing the impugned order dated 29.08.2024 passed by the learned Trial Court, whereby his application under Order IX Rule 13 of the CPC for setting aside *ex-parte* judgment and decree dated 31.05.2023 was dismissed.

9. No one appeared for the respondent despite sending advance notice.

10. Having heard the learned counsel for the appellant and on perusal of the record, this Court has no hesitation in finding that the present appeal is bereft of any merits.

11. It is an admitted fact that in the suit for recovery filed by the respondent/plaintiff, the defendant was duly served with the summons for settlement of issues on 22.02.2021. However, for non-appearance he was proceeded *ex-parte vide* order dated 21.01.2022. Thereafter, an application was moved under Order IX Rule 7 of the CPC for setting aside the *ex-parte* order but the said application was dismissed by the learned Trial Court due to non-prosecution *vide* order dated 07.10.2022.

12. It appears that another application was moved by the applicant on 11.01.2023 for revival of the earlier application filed under Order IX Rule 7 of the CPC with the request to allow his written statement to be taken on the record alongwith an application for condonation of delay, but the request was turned down. No challenge was raised by the appellant against the orders dated 07.10.2022 and 11.01.2023 and the said order became final and eventually the learned Trial Court passed the *ex-parte* judgment and decree dated 31.05.2023.

13. It is borne out from the record that the appellant/defendant was present in the Court on 13.04.2023 when the matter was listed for



clarifications and the matter was then adjourned for judgment on 27.05.2023 and eventually the *ex-parte* judgment/decreed was passed *vide* order dated 31.05.2023.

14. It is subsequent thereto that the present application under Order IX Rule 13 of the CPC was moved. *Ex-facie*, the appellant was well aware of the pendency of the proceedings and it is manifest that he had deliberately failed to appear in the proceedings. A lame excuse was taken that he was duped by his counsel and was not apprised of the dates, but the mis-conduct of the appellant is quite apparent as he diligently failed to pursue his remedies in law. At the cost of the repetition, the appellant never challenged the orders dated 07.10.2022 and 11.01.2023.

15. In the face of aforesaid facts, the ingredients of order IX Rule 13 of the CPC are not satisfied. Hence, the present appeal is dismissed. The pending application is also disposed of.

DHARMESH SHARMA, J.

APRIL 17, 2025/sp/sa