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

% **Date of decision: 30th April, 2025**

+ **FAO 117/2025 & CM APPL. 25850/2025**

IQBAL SINGH AND ANRAppellants

Through: **Mr. Sandeep Tyagi, Adv.**

versus

ASHOK LAMBA AND ANR.Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 25851/2025 (EXMP.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 25852/2025 (DELAY OF 19 DAYS IN RE-FILING.)

3. For the reasons stated in the application and in the interest of justice, the application is allowed and the delay of 19 days is condoned.

4. The application stands disposed of.

FAO 117/2025 & CM APPL. 25850/2025

5. The appellants have preferred the present appeal under Section 104 read with Order XLIII Rule 1(R) read with Section 151 of the Code of Civil Procedure, 1908 [“CPC”] for setting aside the impugned order dated 16.01.2025 passed by the learned District Judge-06 (Central), Tis Hazari Courts, Delhi [“**Trial Court**”] whereby



the application of the respondents/plaintiffs under section 151 of the CPC was allowed and the suit bearing No. CS DJ/0616011/2016 titled as '*Ashok Lamba v. Iqbal Singh & Ors.*' was restored.

6. No one is present for the respondents despite sending advance notice.

7. Having heard the learned counsel for the appellants and upon perusal of the record, this Court finds that the present appeal is bereft of any merits. In a nutshell, the suit filed by the respondents/plaintiffs was dismissed *vide* order dated 27.02.2023 for the non-appearance of the respondents/plaintiffs as well as their counsel. It appears that an application under Section 151 of the CPC read with Section 5 of the Limitation Act, 1965 was instituted on behalf of the respondents/plaintiffs on 11.09.2023, which was listed for hearing on 16.09.2023 and thereafter on 18.12.2023. A reply was filed by the appellants to the application and the restoration of the suit was vehemently opposed.

8. Learned Trial Court *vide* the impugned order dated 16.01.2025 was pleased to allow the application assigning the following reasons:

“Now, this court shall examine the grounds for non-appearance of the plaintiffs. Non-appearance of the plaintiffs led to the dismissal of the suit as per Order 9 Rule 8 CPC. Further, the Order 9 Rule 9 bars filing of fresh suit on the same cause of action, however, the plaintiff may apply for an order to set aside the order of dismissal and the court shall make an order setting aside the dismissal upon such terms as to costs if the plaintiff satisfies the court that there were sufficient grounds for his non-appearance when the suit was called on for hearing. In the matter of *Tata Motors United V. A.C Care Motors Pvt. Ltd.* decided on January 30, 2015 the Hon'ble Bombay High Court held that the application under Order 9 Rule 9 is permissible to restore the suit dismissed for non-prosecution.

In the present case, the plaintiffs submitted that there were



two deaths in their family and due to that, they could not contact his lawyer. Consequently, his lawyer stopped appearing before the court. It is worth mentioning here that the present suit is at the stage of the defendant's evidence. Apparently, the suit is at the very advance stage. The suit is for possession, permanent injunction and mesne profits. If the suit is dismissed in default, then the plaintiff would be left remediless as he can not file a fresh suit on the same cause of action. At the same time, the plaintiffs shall not be permitted to pursue the suit for perpetuity. The plaintiff has to be vigilant in pursuing the suit so as to give finality to the litigation. The lethargic approach of the plaintiff in pursuing the suit warrants costs in favour of the defendants. As a result, the suit is restored to its original number with costs of Rs. 5000/- payable to the defendants. With these observations, **the present application stands allowed.** The present application for restoration of suit stands consigned to the Record Room with the main file. Let a copy of this ordersheet be also annexed with the main file. Put up for D.E on **18.03.2025.**”

9. It is also borne out from the record that the respondents/plaintiffs had otherwise been diligently pursuing their case. The suit was dismissed at the stage when the matter was listed for defendant's evidence. In fact, on. 27.02.2023 when the matter was dismissed, no witnesses had been summoned or were present on behalf of the appellants/ defendants.

10. In the opinion of this Court, the learned Trial Court rightly observed that firstly, the suit was at a very advanced stage when the suit was dismissed for non-appearance of the respondent/plaintiff or his counsel; and secondly, the respondents/ plaintiffs was prevented from instituting the application for restoration due to two consecutive deaths in the family that constituted 'sufficient cause' in terms of Order IX Rule 9 of the CPC.

11. There is no gainsaying that the expression “sufficient cause” has to be construed liberally upon taking a holistic view of the matter.



It is evident that the application for restoration could not be filed for reasons beyond the control of the respondent/plaintiff. It is also borne out from the record that the appellants/defendants have been suitably compensated by imposition of costs upon the respondents/plaintiffs

12. Therefore, the application under Section 151 of the CPC, which was purportedly under Order IX Rule 9 of the CPC was rightly allowed.

13. For the foregoing reasons, the present appeal is dismissed.

14. The pending application also stands disposed of.

DHARMESH SHARMA, J.

APRIL 30 2025/*Sadiq*