



2025:DHC:10077



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

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Date of decision: 15.11.2025

+ **FAO 153/2024 & CM APPLs. 27039/2024, 12939/2025**

SH ASHOK KUMAR

.....Appellant

Through: Mr. Ghanshyam Thakur, Advocate
alongwith appellant in person.

Versus**SMT LAKSHITA CHANDEL**

.....Respondent

Through: Mr. Vikas Kumar and Mr. Govind
Pareek, Advocates

CORAM:**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. The present appeal under Order XLIII Rule 1 of the Civil Procedure Code, 1908 (the CPC), assails the correctness of Annexure P-1 Order dated 05.04.2024, whereby the trial court dismissed the appellant's/defendant's application under Order IX Rule 13 read with Section 151 CPC seeking setting aside of Annexure P-3 *ex-parte* decree dated 05.09.2023, as well as his application under Section 144 CPC, and thereby affirmed the *ex-*



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parte decree passed under Order VIII Rule 10 CPC decreeing the plaintiff/respondent's suit for recovery of possession, arrears of rent and injunction in respect of Shops No. C-238 and C-239, Sector-7, Punarwas Colony, Dwarka, New Delhi.

2. The facts relevant to the present appeal are that the plaintiff/respondent instituted a suit on 12.02.2023 alleging that the appellant/defendant was her tenant in the two suit shops and had defaulted in payment of rent. The appellant/defendant was served with summons on 17.03.2023 and entered appearance on 30.05.2023, when time to file the written statement was granted. Despite expiry of the statutory and extended periods, no written statement was filed. On 05.09.2023, the appellant/defendant remained absent, his right to file the written statement was closed, his defence was struck off, and the suit was decreed under Order VIII Rule 10 CPC for possession of both shops, arrears of Rs. 66,000/- with interest, and permanent injunction.

3. Subsequently, the plaintiff/respondent initiated execution



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proceedings and possession of the shops was taken. The appellant/defendant thereafter moved an application under Order IX Rule 13 CPC asserting that his absence on 05.09.2023 was due to acute lower back pain for which he had been advised rest from 02.09.2023 to 07.09.2023, relying on Annexure P-7 medical prescriptions and an X-Ray. He also filed an application under Section 144 CPC seeking restitution on the ground that possession had already been taken in execution.

4. The plaintiff/respondent contested both the applications, disputing the genuineness of the medical records and contending that the appellant/defendant had offered no explanation for not filing the written statement despite several opportunities.

5. The trial court, after considering the materials, rejected both applications by order dated 05.04.2024, holding that no sufficient cause had been shown either for non-appearance or for condoning the delay in filing the written statement, and consequently declined to recall the *ex-parte* decree.



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6. It is submitted by the learned counsel for the appellant/defendant that the trial court went wrong in setting her *ex-parte* and passing the *ex-parte* judgment when sufficient cause have been shown for the inability of the appellant/defendant to file the written statement within the time granted by the Court. The appellant/defendant had some medical ailments which prevented her from contacting the counsel concerned and giving effective instructions for filing the written statement. She submits that in the interest of justice, the impugned order may be set aside and the appellant/defendant be given an opportunity to contest the matter and obtain an order on merits.

7. *Per contra*, the learned counsel appearing on behalf of the plaintiff/respondent submits that there are absolutely no reason(s) shown for the failure on the part of the appellant/defendant to file the written statement within the time granted by the Court and hence, there is no infirmity in the impugned order calling for an interference by this Court.



8. Heard both sides.

9. It is well said that the time as provided under Order VIII Rule 1 CPC can be extended by the Court, if sufficient reasons are shown by the defendant for the same. According to the appellant/defendant she was suffering from back pain which prevented her from contacting her lawyer and giving necessary instructions for filing the written statement. Though the said contention or ground taken up does not quite inspire the confidence of the Court, the facts and circumstances of the case and in the interest of justice, requires the party to be given an opportunity to obtain an order on merits.

10. However, for the laches, costs will have to be imposed. Hence, the order shall stand set aside on deposit of costs of Rs.5,000/- before the Delhi High Court Legal Services Authority within a period of one month from today failing which the appeal shall stand dismissed.

11. In the event of the aforesaid condition being complied with,



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both the parties are at liberty to adduce oral and documentary evidence in support of their respective contentions.

12. The parties shall appear before the trial court on 14.01.2026.

13. The appellant/defendant shall file the written statement positively within one month of the said date. Thereafter the trial court will give opportunity to both sides to adduce their respective evidence and dispose of the suit as expeditiously as possible.

With the aforesaid observations, the appeal is disposed of along with pending applications(s), if any.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 15, 2025

p'ma/RN