



2025:DHC:3446-DB



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

Date of decision: 08.05.2025

+ MAT.APP.(F.C.) 170/2025

SH. ARVIND SAGAR

.....Appellant

Through: Ms.Babli Kala and Mr.Sujeet
Kumar Singh, Advs.

versus

SMT. KAVITA @ SEEMA

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE MANOJ JAIN

NAVIN CHAWLA, J. (ORAL)

CM APPL. 27198/2025

1. For the reasons stated in the application, the delay of 39 days in filing the appeal is condoned.
2. The application is disposed of.

MAT.APP.(F.C.) 170/2025 & CM APPL. 27196/2025

3. This appeal has been filed challenging the Order dated 19.02.2025 passed by the learned Principal Judge, Shahdra District, Karkardooma Courts, Delhi in Misc. Crl. No. 41/2024 titled ***Kavita @ Seema vs. Arvind Sagar @ Sagar***, dismissing the application filed by the appellant under Order IX Rule 13 of the Code of Civil Procedure, 1908 (in short, 'CPC') as also the application filed under Section 5 of the Limitation Act, 1963.



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4. The respondent had filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), being CC No.124/2019, on which summons were issued to the appellant and admittedly, were received by the appellant in March 2019.

5. As the appellant did not appear in the said proceedings, he was proceeded *ex-parte* on 06.07.2019, and by an Order dated 04.07.2023, the petition filed by the respondent was allowed, directing the appellant to pay maintenance of Rs.5,500/- per month to the respondent from the date of filing of the said petition till the subsistence of the relationship of husband and wife between the parties.

6. The appellant did not comply with the said Order and, therefore, in an Execution Petition, warrants of attachment were also issued.

7. It is only thereafter that the appellant filed the above applications, seeking recall of the *ex-parte* Order against him.

8. In the application under Order IX Rule 13 of the CPC, the appellant admitted the due service of summons of the petition filed by the respondent on the appellant in the month of March 2019. He, however, stated that he had suffered an injury in his right hand and remained bed-ridden for three to four months where after due to outbreak of COVID-19 pandemic, he could not appear in the petition. He also filed some medical documents in support of his application.

9. In the application, however, he admitted that there were separate proceedings initiated by the respondent against the appellant under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the, 'DV Act'), in which he was duly



appearing before the concerned Court.

10. The learned Family Court, however, dismissed the applications filed by the appellant observing as under:

“Perusal of file shows that the respondent was duly served with the summons on 01.05.2019, but he failed to appear on 10.05.2019, whereas no adverse order was passed against him on that day and again time was granted to file WS on 06.06.2019. However, on 06.06.2019, he again failed to appear but still last chance was granted to file WS for 06.07.2019, whereas on 06.07.2019 also, he again absented and was proceeded ex-parte. In fact, the respondent has remained ex-parte till final adjudication of this case.

Respondent has alleged that he came to know about this case when the property of his mother was attached under the direction of the court, whereas he has not explained as to why he did not bother to enquire about the summons from the concerned court under DV Act, if he was under impression that the summons might be pertaining to said case. Rather he kept mum and now has taken this vague plea.

Respondent has not denied that he was duly served with summons and failed to appear before this court. He has alleged that he also suffered hand injuries and remained bed ridden for 3-4 months, whereas his medical documents have not supported this claim and have proved that he suffered accidental injuries on 12.05.2019, but refused to get admitted to hospital, which suggests that his medical condition was not so worse to remain confined to bed for 3-4 months. In fact, entire application has failed to explain any valid reason for non-appearance of the respondent. Further, he has not explained as to why he filed this application on 06.06.2024, whereas he had already come to know about ex-parte judgment on 09.03.2024 itself when shop was attached. As such, version of the respondent is



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not believable and none appearance of the respondent was intentional and deliberate, due to I found no ground to allow this application, hence dismissed.”

11. The learned counsel for the appellant today submits that not only did the appellant suffer an injury on his right hand in an accident which occurred on 12.05.2019, but was also suffering from depression for which he was on medication. In support of her submissions, she draws our attention to a medical report from the Lady Hardinge Medical College and Smt SK Hospital dated 12.05.2019, as well as to a medical prescription from the Hindu Rao Hospital dated 20.04.2018.

12. We have perused the medical documents placed on record by the appellant.

13. We find that as far as the plea of the appellant suffering from depression is concerned, he was advised some medicines for a period of one week *vide* the prescription dated 20.04.2018. While there appears to be another report dated 07.09.2018 prescribing certain medications for a period of three days, thereafter, there appears to be a gap in the medical prescriptions for a period of about six years, and the next prescription placed on record is of August 2024.

14. As far as the injury to the hand is concerned, the prescription dated 12.05.2019 shows that the appellant was only complaining of pain in his right hand and right leg and was attended to at that time. This, however, certainly does not justify his non-appearance before the learned Family Court in spite of receipt of summons.

15. Accordingly, we find no infirmity in the Impugned Order passed by the learned Family Court.



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16. The appeal alongwith the pending application stands dismissed.

NAVIN CHAWLA, J

MANOJ JAIN, J

MAY 8, 2025/sg/ik

Click here to check corrigendum, if any