



2025:DHC:11107



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

% ***Date of decision: 08.12.2025***

+ **FAO 258/2019 & CM APPLs. 29301/2019, 50343/2019 & 53452/2019**

MALKIT SINGHAppellant

Through: **Mr. K.S. Sharma, Advocate**

Versus

JARNAIL SINGHRespondent

Through: **Mr. Satish Kumar, Mr. Chirag Jain,
Mr. Parth Mehra and Mr. Harshil
Gupta, Advocates**

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT (ORAL)

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Order XLIII Rule 1 read with Section 151 of Civil Procedure Code, 1908 (the CPC) has been filed by the applicant/defendant, in case bearing No. M-130/18 on the file of the learned Additional District and Sessions Judge, South East District, Saket Courts, New Delhi, aggrieved by order dated 01.05.2019 by which his application under Order IX Rule 13 CPC was dismissed.



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2. In the application it was alleged, that the applicant/defendant had not received summons in the suit and that he became aware of the decree only upon the receipt of notice in the execution petition. The trial court dismissed the application on the ground that the summons issued to the defendant had been refused by him and that he had knowledge of the decree as early as on 31.05.2018, thereby rendering false his allegation that he came to know about the *ex-parte* decree only upon the receipt of the notice in the execution petition. Aggrieved by the order, the defendant has come up in appeal.

3. It is submitted by the learned counsel for the appellant/defendant that the cheque forming the basis of the suit was misused by the respondent/plaintiff; that the appellant/defendant had never engaged a lawyer and consequently, he was unaware of the pendency of the proceedings. It is also submitted that only when the appellant/defendant received notice



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in the execution petition, he came to know about the decree.

4. *Per contra*, it is submitted by the learned counsel for the respondent/plaintiff that no sufficient cause/reasons has been shown for either condoning the delay in filing the Order IX Rule 13 application or for setting aside the *ex-parte* decree.

5. Heard both sides.

6. As noticed by the trial court, the records reveal that summons was in fact issued and served on the appellant/defendant. The summons was refused to be accepted and, therefore, as rightly held by the trial court, refusal is proper service of summons, especially, when he has no case that the postal address shown is incorrect. The allegation that the appellant/defendant came to know about the decree only when he received notice in execution petition is apparently incorrect and false. The records reveal that on 23.01.2018, he had moved an application seeking stay of the proceedings until he could inspect the records before the trial court



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for the purpose of filing appropriate application for setting aside the *ex-parte* judgment. Therefore, even assuming that no summons was served on him, the appellant/defendant had knowledge of the decree on 23.01.2018. Despite such knowledge, no application for setting aside the *ex-parte* decree was filed within time. Instead, the application is seen to have been filed on 28.09.2018. The delay in filing the application for setting aside the *ex-parte* decree has not been explained and no application for condonation of delay has been filed. Although it is settled that a separate application for condonation of delay is not mandatory, the reasons, as to why, a party was not able to file an application for setting aside the *ex-parte* order/decreed within the prescribed time must certainly be referred to or mentioned in the application for setting aside the decree. However, in the present case, there is no explanation for the delay, nor has any sufficient cause or any cause for that matter been shown for setting aside the decree.



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7. In these circumstances, I find no infirmity in the impugned order calling for an interference by this Court.

8. In the result, the appeal *sans* merit, stands dismissed. Application(s), if any, pending, shall also stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 8, 2025
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