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

+ **FAO 132/2025 & CM APPL. 29114/2025**

**CHANDER BALA** .....Appellant

Through: Ms. Iqura Khan, Adv.

versus

**PARMOD MATHUR** .....Respondent

Through: Counsel appearance not given.

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

% **14.05.2025**

1. This hearing is being conducted through hybrid mode.

**CM APPL. 29115/2025 – EXMP.**

2. Allowed, subject to all just exceptions.

3. Application stands disposed of.

**CM APPL. 29113/2025 – DELAY OF 153 DAYS IN FILING &  
CM APPL. 29116/2025 – DELAY OF 77 DAYS IN RE-FILING**

4. The applicant/appellant is seeking condonation of delay of 153 days in filing the appeal along with condonation of delay of 77 more days in re-filing the present appeal.

5. The applicant/appellant has made bald averment of suffering from old age and financial troubles. No documents substantiating her medical condition are annexed or relied upon. I am afraid the applicant/appellant is woefully failing to show any sufficient cause for condonation of delay. Hence, the applications are dismissed.

**FAO 132/2025 & CM APPL. 29114/2025**

6. Having heard the learned counsel for the appellant and on perusal of the record, even on taking a liberal view on condonation of delay and assuming it were to be allowed, the appeal too is bereft of

merits.

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7. The appellant is preferring the present appeal under Section 104 read with Order XLIII Rule 1(d) of the Code of Civil Procedure, 1908<sup>1</sup>, thereby assailing the impugned order dated 22.05.2024, whereby her application under Order IX Rule 7 read with Order IX Rule 13 of the Code of Civil Procedure, 1908, for setting aside the *ex parte* order dated 07.03.2022 and the *ex parte* judgment-cum-decree dated 12.05.2022 has been dismissed by the learned District Judge, South-West District.

8. In a nutshell, the appellant had initially instituted a suit bearing No. CS No. 601/2011 (now CS SCJ 43/2020) thereby seeking reliefs in the nature of mandatory and permanent injunction against her son Hariom on 21.07.2011 on the ground that she was the absolute owner of the subject property<sup>2</sup> and she had allowed her son to reside in the same and he was failing to vacate the same despite serving of legal notice dated 24.05.2011 Ex. PW-1/3.

9. Upon perusal of the record, it emerges that the suit instituted by the appellant/plaintiff against her son, Hariom, was proceeded *ex parte* on 19.02.2014, culminating in an *ex parte* judgment and decree dated 09.04.2015 in favour of the appellant/plaintiff. Subsequently, the defendant therein filed an application seeking setting aside of the said *ex parte* proceedings and decree, which came to be dismissed by the Learned Civil Judge, Dwarka Courts, New Delhi, *vide* order dated 28.04.2017. Aggrieved thereby, the defendant Hariom preferred an appeal (RCA No. 81/17 titled *Hariom Shokeen v. Smt. Chander Bala*), which was allowed by the learned Appellate Court *vide* order dated

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<sup>1</sup> CPC



30.11.2018. In consequence, the *ex parte* order dated 19.02.2014 and judgment and decree dated 09.04.2015 were set aside, and the suit was restored to its original number.

10. It is the case of the appellant that on getting an *ex parte* judgment against her son, as she was facing financial difficulties, she approached the present respondent, with whom she shared a close relationship, seeking a loan of ₹17,00,000/- for construction on the subject property. The appellant alleges that pursuant to their understanding, the respondent extended the said loan; however, he fraudulently and dishonestly induced her to sign certain documents, purportedly pertaining to loan agreements and affidavits. It is the appellant's case that she was subsequently informed that the said documents were not loan-related, as she had been led to believe, but were in fact sale documents purporting to transfer ownership of the subject property to the respondent.

11. It is averred by the appellant that upon discovering the alleged fraud, the appellant/plaintiff lodged a criminal complaint at Police Station Chhawla, alleging that the respondent had dishonestly procured her signatures on documents under the pretext of a loan agreement, which were later found to be sale documents concerning the subject property. The appellant thereafter demanded the return of the original documents and requested the respondent to initiate cancellation of the same. In response, the respondent claimed the documents were executed as security for the loan and denied any transfer of ownership. He further stated that the original documents were with a third party and assured their retrieval and cancellation, along with an offer to assist in the requisite formalities.

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legal notice dated 07.11.2015, wherein the appellant communicated the termination of certain documents executed on 05.11.2015, namely the Sale Agreement, Receipt, Possession Letter, Will, Indemnity Bond, Special Power of Attorney, and Undertaking in respect of the suit property, the respondent is stated to have approached the appellant and expressed willingness to amicably resolve the matter, contingent upon the appellant obtaining a decree of mandatory injunction against her son in the aforementioned suit.

13. Reverting to the instant matter, it is noted that in the year 2018, the appellant became aware that the respondent had instituted a suit for specific performance, bearing CS No. 1722/2018, seeking a decree directing the appellant to execute and register a sale deed in respect of the subject property in his favour. The appellant asserts that the respondent agreed to withdraw the suit for specific performance but later increased his settlement demand to ₹25,00,000/-, citing delays in the appellant's litigation with her son. Despite her reluctance, the appellant agreed, and relying on the respondent's assurance and the onset of the COVID-19 pandemic, her counsel ceased appearing before the learned Trial Court. It is further averred that the respondent again approached the appellant for amicable settlement, resulting in a General Agreement/MoU dated 25.10.2023, wherein both parties agreed to jointly sell the suit property at a higher price and share the proceeds equally. Despite this, the respondent continued to pursue his suit for specific performance. Believing the matter had been settled, the appellant did not actively pursue representation in the suit.

14. Consequently, due to continuous non-appearance, the learned Trial Court proceeded *ex parte* against the appellant *vide* order dated

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decree dated 12.05.2022 came to be passed. The appellant, thereafter filed an application under Order IX Rule 7 of the CPC read with Order IX Rule 13 of the CPC, for setting aside the *ex parte* order dated 07.03.2022 and the *ex- parte* judgment dated 12.05.2022, which was dismissed by the learned Trial Court *vide* order dated 22.05.2024.

15. Evidently, the appellant has failed to demonstrate that she was prevented by any sufficient cause or by circumstances beyond her control from appearing and contesting the suit filed by the respondent. The essential ingredients of Order IX Rule 13 of the CPC are clearly absent, as it is not the appellant's case that she was not served with summons for settlement of issues, or that she was otherwise prevented from appearing in the matter for reasons beyond her control. The appellant has been engaged in litigation with her son for a considerable period and has access to legal counsel. It is, therefore, not plausible that she chose not to appear in the matter solely based on the respondent's verbal assurance.

16. Resultantly, the present appeal is dismissed. All pending applications stand disposed of.

**DHARMESH SHARMA, J.**

**MAY 14, 2025**/gunn/ss

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