



2025:DHC:4882



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

% ***Date of Decision: 22.05.2025***

+ **C.R.P. 155/2025, CM APPL. 31800/2025**

M/S SWAMI HARISHARNANAND CHARITABLE TRUST
(REGD.)

.....Petitioner

Through: Mr. Narayan Krishan, Advocate.
versus

SUMIT GUPTA

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 31803/2025/Exemption from filing certified copies]

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

CM APPL. 31801/2025/Exemption from filing official translation]

3. Allowed, subject to all just exceptions.
4. The Application stands disposed of.

CM APPL. 31802/2025/Additional Document]

5. This is an Application filed by the Petitioner seeking to bring additional documents on record.
6. Learned Counsel for the Petitioner seeks and is granted permission to withdraw the present Application.
7. The Application is accordingly dismissed as withdrawn.



C.R.P. 155/2025, CM APPL. 31800/2025/Stay/

8. The present Petition has been filed by the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as ‘CPC’] seeking to challenge an order dated 12.02.2025 passed by Ld. Civil Judge-06, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as ‘Impugned Order’]. By the Impugned Order, an Application filed by the Respondent under Order IX Rule 7 and 13 of the CPC (Defendant before the learned Trial Court) and an Application filed by the Respondent/Defendant under Section 5 of the Limitation Act, 1963 [hereinafter referred to as ‘the Act’] have been allowed.

9. Given the order that the Court proposes to pass today, this Court does not deem it apposite to issue Notice in the matter.

10. Briefly the facts are that a suit for recovery of damages and compensation in the sum of Rs. 2.86 lacs were filed by the Petitioner (Plaintiff before the learned Trial Court) in the year 2014. The allegation in the Plaint was that on the basis of construction/unauthorised construction taking place in the property belonging to the Respondent/Defendant, which is adjacent to the property of the Petitioner/Plaintiff, the property of the Petitioner/Plaintiff was damaged. The suit was filed seeking compensation for such damages to the property of the Petitioner/Plaintiff on 14.07.2014.

11. The record reflects that the Respondent/Defendant was served through publication and affixation and since the Respondent/Defendant did not appear before the learned Trial Court, the Respondent/Defendant was proceeded as ex-parte by an order dated 08.10.2016. Thereafter, an ex-parte decree was passed by the learned Trial Court on 08.10.2016 in the sum of



2025:DHC:4882



Rs.2 lacs with interest at the rate of 9% per annum from the date of filing of the suit till the date of its realisation.

12. The Respondent/Defendant had on 06.09.2024 filed an Application for condonation of delay under Section 5 of the Act as well as an Application under Order IX Rule 7 and 13 read with Section 151 of the CPC for setting aside of the ex-parte decree.

13. It is the case of the Respondent/Defendant that the Respondent/Defendant was not aware of the suit that was filed, since he was never served on account of the fact that a wrong address of the Respondent/Defendant was provided by the Petitioner/Plaintiff. It has further been contended that the case of the Petitioner/Plaintiff is based on false and misleading facts without an iota of truth. It is further averred by the Respondent/Defendant that there was no illegal construction being carried out at the premises so alleged, since the premises were lying locked up at the time of filing of the suit.

13.1 Essentially, it is contended that the damages are not due and payable to the Petitioner/Plaintiff.

14. In the Application for seeking condonation of delay filed by the Respondent/Defendant, it has been contended that wrong address of the Respondent/Defendant had been given in the Memo of Parties and thus, the Respondent/Defendant was proceeded as ex-parte. The Respondent/Defendant was not aware of the proceedings and only became aware of the suit and the ex-parte decree in the first week of May 2024, when the Respondent/Defendant received the Notice of the execution proceedings.



14.1 The other ground which is set out in the Application for condonation of delay is that the Respondent/Defendant was busy in taking care of his old ailing father who was suffering from various age-related ailments such as high blood sugar and high blood pressure.

14.2 It has further been contended that the Respondent/Defendant did not have the complete set of papers of the case file hence a delay in filing.

15. The learned Trial Court examined the Applications filed to set aside the ex-parte decree and allowed the Respondent/Defendant to contest the matter, subject to payment of costs in the sum of Rs.5,000/-.

16. Learned Counsel for the Petitioner/Plaintiff submits that firstly the *bona fides* of the Respondent are under challenge. Learned Counsel submits that the address of the Respondent/Defendant which has claimed not to have received the Notice of the execution proceedings is the same address as is provided in the Memo of Parties right from the date of filing of the suit. Learned Counsel further submits that the suit was filed in the year 2014 and the ex-parte decree was passed in the year 2016 and that almost 9 years have elapsed since the ex-parte decree was passed and the grounds that was set out in the Application for condonation of delay, do not show any sufficient cause.

17. An examination of the Impugned Order shows that the principal reason for passing of the Impugned Order is that the service was done by way of publication in the newspaper only. It has been held by the learned Trial Court that it is the case of the Applicant/Respondent that he is the owner of the property, whose address was given in the suit filed by the Petitioner/Plaintiff but an owner may not always reside in his own premises.



Thus, it is contended that the learned Trial Court has held that sufficient cause has been shown to set aside the ex-parte decree. The relevant extract of the Impugned Order is set out below:

“10. Ex-parte decree in the suit was passed on 08.10.2016. As per record of the suit, summons were not served to the applicant/defendant via ordinary mode and the applicant/defendant was served by way of publication in a newspaper only. It is the case of the applicant that the address as mentioned in the suit is incorrect and it is the case of the respondent that the applicant is admittedly, the owner of the property, address of which was given in the suit. In considered opinion of the court, a person may not always reside at a premises of which he is an owner. It is the case of the respondent that it was not aware of any other address of the applicant but the same does not mean that a party can be served at an address where he is not residing. In view of the same, sufficient cause has been shown by the applicant to set aside the ex-parte decree as the applicant was not aware of the suit proceedings as he was not properly served.

11. In view of the above observations, the application U/O 9 Rule 7 and 13 CPC is allowed and ex-parte decree dated 08.10.2016 is set aside subject to cost of Rs.5,000/- to be paid by the applicant to the respondent.”

[Emphasis Supplied]

18. The record however reflects that the address of the Respondent/Defendant as set out in the Memo of Parties in the Plaint and the present Petition is 21, Netaji Subhash Marg, Darya Ganj, New Delhi - 110002 and the address as set out in the Memo of Parties in the Execution Petition is also 21, Netaji Subhash Marg, Darya Ganj, New Delhi - 110002.

18.1 A hard copy of the Execution Petition has been handed across to the Court today. The Registry is directed to scan and upload the same so that it remains embedded in the case file.

18.2 Undisputedly, thus the Respondent/Defendant have been served summons in the execution proceedings on the same address.



2025:DHC:4882



19. However, and in the interest of justice without delving into the merits of the Application under Section 5 of the Act, this Court deems it apposite to modify the Impugned Order directing the Respondent/Defendant to deposit 50% of the principal amount awarded by the Respondent/Defendant within a period of eight weeks from today.

19.1 The deposit made by the Respondent/Defendant shall abide by the Judgment and Decree passed by the learned Trial Court, including any proceedings emanating therefrom.

19.2 In addition, the Respondent/Defendant shall pay the costs in the sum of Rs.10,000/- to the Petitioner/Plaintiff.

20. Learned Counsel for the Petitioner informs the Court that the Written Statement has already been filed by the Petitioner/Plaintiff before the learned Trial Court and the Replication will be filed within a period of two weeks from today. Learned Counsel further submits that directions may be passed for expeditious disposal of the matter.

21. Accordingly, it is directed that both parties shall not take any unnecessary adjournments before the learned Trial Court.

22. The learned Trial Court is requested to decided the matter as early as possible, given that the suit was admittedly filed in the year 2014.

23. The Petition is accordingly disposed of in the foregoing terms. The pending Application also stands closed.

24. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 22, 2025/g.joshi/ha

[Click here to check corrigendum, if any](#)