



2025:DHC:3250



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 21.04.2025***+ **C.R.P. 175/2024 & CM APPL. 33721/2024**

GEETANJALI KALRA & ORS.

.....Petitioners

Through: Mr. Shikhar Srivastava, Advocate.

versus

GAURAV GULATI

.....Respondent

Through: Respondent in person.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioners seeking to challenge an order dated 23.03.2024 passed by the learned JSCC-cum-ACSJ-cum-GJ, North West, Rohini District Court, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Applications for setting aside the ex-parte order filed by the Petitioners [hereinafter referred to as "Applications"] has been dismissed by the learned Trial Court.

2. Learned Counsel for the Petitioners has raised two contentions. He submits in the first instance that order dated 04.12.2021 was passed, despite the fact that this was during the time period as mentioned in the judgment of the *In Re: Cognizance for Extension of Limitation*¹. Secondly, it is contended that in any event the Application filed by the Petitioners does state that the Petitioner No.1 was not in Delhi and was travelling on account of personal and professional commitments. It further sets out that the son of

¹ (2022) 3 SCC 117



the Petitioner No.1 is suffering a medical condition known as Thalassemia, which requires him to be taken to hospital every 15 days for a blood transfusion and also requires a lot of monitoring. Hence the delay.

3. The Respondent, who appears in person, has submitted that there was no sufficient cause given in the Applications filed Petitioners before the learned Trial Court, hence the Applications were rightly dismissed by the learned Trial Court.

4. Briefly, the facts are that a suit for injunction, damages, defamation, extortion, intimidation and harassment was filed by the Respondent (Plaintiff before the learned Trial Court), *inter alia* seeking the following prayers:

“a. Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendants, directing the Defendants not to spread false, defamatory and derogatory information about the Plaintiff and to restrain the Defendants from contacting the Plaintiff in any manner directly or indirectly;

b. Pass a decree for permanent injunction directing the Defendant No.1 to takedown the posts on various social media forums and desist from publishing any such defamatory content as detailed in this Plaint;

c. Pass an order to direct 1the Defendants to issue a public apology on all the social media forums, used by Defendant No. 1 and other Defendants, like Facebook, YouTube, Instagram etc., which should not be deleted or taken down till the existence of the account/channel;

d. Pass an order to direct social media forums i.e., Facebook, YouTube, Instagram, to remove the defamatory posts as mentioned above, from the social media accounts of the Defendant No.1.

e. Pass a decree directing the Defendants to issue an unconditional apology to the Plaintiff admitting lack of factual integrity and the clearly malicious nature of the allegations made by the Defendants;

f. Direct the Defendants to pay jointly and severally a sum of Rupees



2,50,000/- (Two lakhs Fifty Thousand) or for any higher amount as this Ld. Court may be pleased to determine, along with interest @ 18% p.a. from the date of filing and grant leave to the Plaintiff to make good the deficient court fees;

g. Impose exemplary costs and the cost of litigation against the Defendants and in favour of the Plaintiff."

5. The suit was listed before the learned Trial Court and by its order dated 25.09.2021, the Petitioners were served via Whatsapp/electronic mode. The order dated 25.10.2021 and 04.12.2021 reflects that despite service, there was no appearance on behalf of the Petitioners on the said dates and, thus the Petitioners were proceeded with ex-parte. On 04.12.2021, the learned Trial Court also passed an injunction against the Petitioners, directing them not to make any comments or posts about the Respondent directly or indirectly via social media. It is apposite to extract the order dated 04.12.2021 in this behalf which is set out below:

"None has appeared on behalf of Defendants despite repeated calls. Defendants are also not appeared before the Court on last date of hearing despite service of summons and they were given another opportunity to appear before the Court, however, they have failed to appeared before the Court despite repeated calls. It appears that the Defendants are not interested in contesting the present case. Accordingly, all Defendants are hereby proceeded exparte.

Ld. Counsel for Plaintiff has prayed for issuing interim directions against the Defendants by directing them from making any comment / post about the Plaintiff directly or indirectly via social media or in person or by any other medium. Submissions Heard. Record Perused. Keeping in view the submissions made by Ld. Counsel and in the interest of justice, Defendants are directed are directed not to make any comment / post about the Plaintiff directly or indirectly via social media or in person or by any other medium against the Plaintiff till next date of hearing.

Be put up for appearance of Plaintiff as well as Ex-Parte PE on 03.03.2022.

Plaintiff is directed to take steps for leading Ex-Parte PE."

[Emphasis Supplied]



2025:DHC:3250



6. The parties confirms that this interim injunction subsists even today. On the next date of hearing, i.e., 03.03.2022, an Application seeking setting aside of the ex-parte order was filed by Petitioner No.1 and subsequently, on 24.09.2022, a similar Application was also filed by the remaining Petitioner Nos.2 to 7.

7. The record also reflects that the Petitioners have been appearing on each date thereafter and contesting the matter. Although, these Applications were filed on 03.03.2022/24.09.2022, the Applications were decided by the Impugned Order which is dated 23.03.2024.

8. The finding of the learned Trial Court is that the Petitioner No.1 has failed to give any reason for her non-appearance. A similar finding has been given for Petitioner Nos.2 to 7. The record reflects otherwise. Since, the Petitioner No.1 has amongst other issues, raised an issue of the fact that her son suffered from a disease and she is the care giver of the son and on account of personal and professional commitments, she was unable to appear, it cannot be said that there was no reason given in the Application.

9. So far as concerns the Application filed by the Petitioner Nos.2 to 7, their Application states that initially they did not comprehend the gravity of the situation. However, subsequently, they sought legal advice and were advised to contest the case and filed the Application seeking to set aside the ex-parte order.

10. This Court has also perused the plaint that has been filed by the Respondent. The allegations in the plaint emanate from a matrimonial dispute between the Petitioner No.1 and the Respondent. The allegations in the plaint are primarily against the Petitioner No.1. It is contended by



learned Counsel for the Petitioners that there are no specific allegations in the plaint *qua* Petitioner Nos.2 to 7. The allegations *qua* Petitioner Nos.2 to 7 and, in any event, in respect of sharing and liking posts on social media.

11. It is also clear from the Impugned Order that the Petitioners were only served electronically and *via* WhatsApp. The service was effected electronically, in view of the fact that Covid-19 pandemic was ensuing and only electronic service was permitted by the Courts during that period. Thus, all the Petitioners were served only electronically.

12. Order IX Rule 7 of the CPC reads as follows:

“ORDER IX- APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

...7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance— Where the Court has adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance.”

13. The provisions of Order IX Rule 7 of the CPC provide for the fact where the Court has adjourned the hearing of the suit *ex-parte* and the Defendant, at or before such hearing, appears and assigns good cause for Defendant’s previous non-appearance, the Court may, set such terms or direct cost or otherwise and the defendant can be heard in answer to the suit as if the Defendant had appeared on the day, which was fixed for his appearance.

13.1 A Coordinate Bench of this Court in the case of ***East India Cotton***



Manufacturing Co. Ltd. v. S.P. Gupta², while relying on the judgement of the Supreme Court in the case of **Sangram Singh v. Election Tribunal, Kotah**³ and in the case of **Arjun Singh v. Mohindera Kumar**⁴, has held that if the Defendant shows good cause for his non-appearance on previous date or dates of *ex-parte* hearing of the suit, the Defendant can be allowed to contest the suit. The relevant extract of the **East India Cotton Manufacturing Co. Ltd.** case is reproduced below:

“6. The questions for decision are whether the application under Order 9 Rule 7 of the Code was within time and it discloses good cause for setting aside the Order proceeding *ex-parte*. Order 9 Rule 7 of the Code reads as under:—

“Where the Court has adjourned the hearing of the suit ex-parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs, as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

*The words “Where the Court has adjourned the hearing of the suit ex-parte”, means that there is to be hearing on the date to which the suit stands adjourned. If the “Hearing” of the suit has been completed and the Court has adjourned the suit merely for the purpose of pronouncing judgment, there is clearly no adjournment of “the hearing” of the suit and in such circumstances Order 9 Rule 7 would have no application. **But if the suit has been adjourned for hearing ex-parte such as for evidence etc. and it is further adjourned for arguments it would mean that ex-parte hearing of the suit was not completed and the hearing of the suit ex-parte was adjourned. Under this rule if an application is made on any date fixed for ex-parte hearing of the suit showing good cause for his non-appearance on previous date of dates, the application would be in accordance with Order 9 Rule 7 of the Code. If the applicant establishes good cause for his previous non-appearance the Court would have jurisdiction to set aside the order proceeding ex-parte.***

7. In **Sangram Singh v. Election Tribunal, Kotah**, AIR 1955 SC 425 it has been held that:—

² 1985 SCC OnLine Del 79

³ AIR 1955 SC 425

⁴ A.I.R. 1964, S.C. 993 (1004)



“If at an adjourned hearing the defendant appears and shows good cause for his “previous non-appearance.” He can be heard in answer to the suit as if he had appeared on the day fixed for his appearance.” This cannot be read to mean that he can not be allowed to appear at all if he does not show good cause. All it means is that he can not be relegated to the position he would have occupied if he had appeared. If a party does appear on “the day to which the hearing of the suit is adjourned”, he can not be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing”.

Further, if the defendant wants to put in written statement he can do so only if he shows good cause for his previous absence. In *Arjun Singh v. Mohindera Kumar*, A.I.R. 1964, S.C. 993 (1004) it has been observed as follows:

“On the terms of Order 9 Rule 7 if the defendant appears on such adjourned date and satisfies the court by showing good cause for his non-appearance on the previous day or days he might have the earlier proceedings recalled and have the suit heard in his presence.

On the other hand, he might fail in showing good cause. Even in such a case he is not penalised the sense of being forbidden to take part in the further proceedings of the suit or whatever might still remain of the trial, only he can not claim to be relegated to the position that he occupied at the commencement of the trial”.

8. The law laid down by the Supreme Court makes it clear that if the defendant shows good cause for his non-appearance on previous date or dates of ex-parte hearing of the suit, he can be allowed to file the written statement and contest the suit and if no good cause is shown he can be allowed to take part in further proceedings of the suit...”

[Emphasis Supplied]

14. The Application seeking setting aside of the order dated 04.12.2021 was filed on 03.03.2022 by Petitioner No.1 without any delay on the next date and the Application also sets out the fact that her son suffered from a disease and she is the care giver of the son and on account of personal and professional commitments, she was unable to appear. Thus, the Petitioner No.1 has shown good cause for previous non appearance(s).

14.1 In addition, Petitioners No. 2 to 7 have in their Application to set



2025:DHC:3250



aside the order dated 04.12.2021 stated that the Petitioners No.2 to 7 are lay persons since the main case/cause of action was against Petitioner No.1, Petitioners No. 2 to 7 didn't know whether to contest the suit or not and it was only at a later stage when the Petitioners No. 2 to 7 sought legal help and that they were advised to contest the suit to protect their interest.

14.2. Given the fact that the suit is at a nascent stage, this Court deems it apposite to allow the Applications filed by Petitioner No.1 and Petitioner No. 2 to 7, subject to payment of costs in the sum of Rs.5,000/- to be paid by each of the Petitioners to the Respondent.

15. Accordingly, in view of the foregoing discussions, the Impugned Order is set aside. The parties shall appear before the learned Trial Court on 27.05.2025.

16. The Petition is disposed of in the foregoing terms. Pending Application(s) hereby stand closed.

17. It is however clarified that the Court has not expressed any opinion on the merits of the controversy. The rights and contentions of all the parties are left open.

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

TARA VITASTA GANJU, J

APRIL 21, 2025/pa/r

Click here to check corrigendum, if any