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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 23rd April, 2025**
+ CM(M) 1251/2019 & CM APPL. 38205/2019 & CM APPL.
27926/2022

JAVED MALIK

.....Petitioner

Through: Mr. Pardeep Dhingra and Mr.
Deepanshu Dhama, Advocates.

versus

SAMSON FREDRIC (DECEASED) THR LRS & ANR

.....Respondent

Through: Mr. R.D. Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner is aggrieved by order dated 04.01.2019 and his prime grouse is to the effect that the First Appeal filed by the respondents has been heard and disposed of, without granting any real and actual opportunity to him to defend the same.
2. The petitioner herein i.e. Mr. Javed Malik had filed a suit for injunction. Admittedly he mentioned his address as 1752 (*ground floor and first floor*), Pataudi House, Darya Ganj, New Delhi.
3. The abovesaid suit was filed against Mr. Samson Fredrick and his wife Ms. Regina Samson who are also residents of the same property, *albeit*, at the different portion of ground floor.
4. The suit was, eventually, decreed by the learned Trial Court on 21.04.2005.
5. The defendants, later on, filed an application under Order IX Rule 13 read with Section 151 CPC.
6. Such application was dismissed by the learned Trial Court on 13.01.2017.



7. Feeling aggrieved, they filed an appeal which was registered as RCA No.71/2017. Their such appeal has been allowed and, resultantly, the *ex-parte* judgment has been set aside, *albeit*, subject to cost.

8. As per the contents of the order passed by learned First Appellate Court, the notice of the appeal was issued to the plaintiff but he refused to accept the summons and, therefore, he was proceeded *ex-parte* in the appeal.

9. Learned counsel for the plaintiff submits that there was never any service of appeal upon the plaintiff Mr. Javed Malik. He submits that when the appeal was filed, the appellant (defendants) and the respondent (plaintiff) were shown residents of 1752, (*ground floor*), Pataudi House, Darya Ganj, New Delhi and the process was sent to such address. The process server went to the abovesaid address and when he made inquiries about Mr. Javed Malik, he was told that no one with the abovesaid name was residing there.

10. Interestingly, such information was given to the process server by none other than Ms. Regina Samson, who was one of the appellant.

11. Learned counsel for plaintiff submits that, at the relevant time, the plaintiff was not actually residing there and the premises under his occupation was lying locked and there was no question of refusal. He submits that the appeal was filed by the defendants and the process server contacted them only and on the basis of the information given by the defendants themselves, the deemed service was presumed. It is, therefore, submitted that the service is not valid in the eyes of law.

12. Such contention has, though, been refuted by Mr. Chauhan, learned counsel for defendants/respondents, but at the same time, he submits that, without prejudice to his rights, he would have no objection if learned First Appellate Court is requested to consider the appeal afresh, after having



response, if any, from the side of the plaintiff.

13. A careful perusal of the service report would also suggest that there is not enough of clarity with respect to the service of the appeal upon the plaintiff and, therefore, keeping in mind the overall facts of the case and also taking note the submissions made by Mr. Chauhan, learned counsel for defendants, the present petition is disposed of with the direction to learned First Appellate Court/Successor Court to consider the abovesaid appeal afresh.

14. The parties are directed to appear before the learned First Appellate Court/Successor Court on 29.04.2025 at 2:00 P.M and it will be open to Mr. Javed Malik (respondent in such appeal) to file reply, if any.

15. Learned First Appellate Court, without being influenced by its earlier order, would dispose of the abovesaid appeal in accordance with law, after giving due opportunity of hearing to both the sides.

16. Needless to say, in view of the abovesaid, the impugned order dated 04.01.2019 is set aside. However, as far as the aspect related to cost is concerned, since it has been paid, there would be no direction to the contrary.

17. The petition stands disposed of in aforesaid terms.

18. Pending applications, if any, stand disposed of.

(MANOJ JAIN)
JUDGE

APRIL 23, 2025/ss/SS