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

+ **W.P.(C) 8321/2025**

SURENDER PAL CHAWLA

.....Petitioner

Through: **Mr. Pramod Kumar Bhardwaj, Adv.**

versus

NCT OF DELHI AND ANR.

.....Respondents

Through: **Ms. Rachita Garg, Mr. Agam Rajput, Adv.**

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **30.05.2025**

CM APPL. 36143/2025 (Exemption)

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

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3. The present petition has been filed by the petitioner being aggrieved by an order dated 13.05.2025 passed by the learned District Judge-11, Central District, Tis Hazari Courts, Delhi in CS DJ No. 406/24, whereby two applications filed by the petitioner (defendant) including application/s seeking (i) exemption from payment of costs or reduction of costs [appended as Annexure P2] and (ii) permission to deposit the costs in the AVLAMBAN Fund Scheme, 2024 [appended as Annexure P3] have been dismissed by the learned District Court.

4. The background to the present petition is that a civil suit bearing CS DJ No. 406/24 came to be filed by the respondent no.2 (plaintiff) against the petitioner (defendant). While summons were issued to the petitioner by way



of publication in a local newspaper in Delhi on 13.11.2024, the petitioner who ordinarily resides in Haridwar, submits that he did not come to know of the said summons and consequently, on 23.11.2024, the learned District Court proceeded *ex-parte* against the petitioner.

5. Subsequently, an application under Order IX Rule 7 of Code of Civil Procedure, 1908 came to be filed by the petitioner (defendant) in the aforesaid proceedings before the District Court seeking that the *ex-parte* order dated 23.11.2024 be set aside and the petitioner be allowed to file a written statement. *Vide* order dated 24.03.2025, the said application came to be allowed subject to cost of Rs. 10,000/-.

6. It is stated that the directions contained in the order dated 24.03.2025, whereby the petitioner has been directed to pay a cost of Rs.10,000/-, has caused undue hardship to the petitioner. The order dated 24.03.2025 passed by learned District Judge, Central, Tis Hazari Courts, Delhi, reads as follows:

“Ld. Counsel for plaintiff submits that he is not filing any reply to the application under Order IX rule 7 CPC and shall straightaway argue the application.

Arguments on application under Order IX Rule 7 CPC have been heard.

*It is submitted in the application that the defendant was not served with proper summons as required under law. Summons were served through publication in a Delhi newspaper on 13.11.2024. Defendant could not become aware of the summons as the defendant ordinarily resides at Haridwar. Due to lack of proper service of summons, defendant could not appear before the court on 23.11.2024. On coming to know about the proceedings, defendant engaged a counsel who inspected the file and informed him. It is further submitted that the *ex-parte* order will cause prejudice to the defendant. The defendant has a good and valid defence and thus, he wishes to contest the claims. Hence, it is prayed that the *ex-parte* order dated 23.11.2024 be set aside and defendant be allowed to file written statement.*



Ld. Counsel for plaintiff has contended that this application is just an afterthought and defendant was watching the proceedings of the matter. He has further contended that there was another matter against the defendant and the lawyer present here was also present on the day when the summons were ordered to be served in that court, still this application has been moved 03 months thereafter. He has further contended that it has nowhere been stated that how and when defendant came to know about the proceedings of this case and therefore, it is merely a ploy.

On the other hand. Id. Counsel for defendant has contended that defendant came to know through the counsel who was appearing for defendant in the court of Ms. Neha Paliwal where the summons had been sent for service.

If that be the case, defendant could have come to know about this case on the same day and therefore, the application should have been moved immediately thereafter.

However, Id. counsel for defendant then submits that a mercy chance be given.

Ld. Counsel for plaintiff submits that it should be done subject to heavy cost because the matter will relegate to the stage of filing of written statement.

Considering this, the application under Order IX Rule 7 CPC is allowed subject to cost of Rs. 10,000/- upon the defendant. Ex-parte order dated 23.11.2024 is hereby set aside.

Written statement filed. Copy supplied.

Counsel for defendant undertakes to pay the cost on the next date of hearing.

Put up for filing of replication, admission denial of documents and framing of issues on 13.05.2025. Affidavits of admission denial be filed by both the parties on the next date of hearing.”

7. It can be seen that the cost of Rs.10,000/- was imposed by the District Court as a pre-condition for allowing the petitioner's application under Order IX Rule 7 of the CPC.

8. The cost levied by the District Court are nominal and given the



circumstances enumerated in the order dated 24.03.2025, this Court is not inclined to interfere with the same. However, it is noticed that in the order dated 24.03.2025, it has not been specified as to whom the costs of Rs.10,000/- were required to be paid to, by the petitioner/defendant.

9. In the application under Section 151 CPC filed by the petitioner before the District Court in CS No. 406/24, it has been, *inter alia*, sought as under -:

“3. That, in case, any cost is to be paid by the defendant, it may be permitted to be deposited in the AVLAMBAN Fund Scheme, 2024 maintained with State Bank of India, Tis Hazari Courts Complex, Delhi (Account bearing no.43599660056) as per Hon'ble Delhi High Court's Orders dated 28.11.2024”

10. The said application also came to be dismissed *vide* order dated 13.05.2025 passed by the District Court.

11. Considering the facts and circumstances, given that the impugned order omits to specify as to whom the costs are required to be paid to by the petitioner (defendant), this Court is inclined to permit the petitioner to deposit the costs in the AVLAMBAN Fund Scheme, 2024 maintained with State Bank of India, Tis Hazari Courts Complex, Delhi (Account bearing No. 43599660056). It is directed accordingly. Let the same be done within a period of 4 weeks from today.

12. The present petition stands disposed of in the above terms. Pending application also stands disposed of.

SACHIN DATTA, J

MAY 30, 2025/at