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

+ **FAO 255/2023 and CM APPL. 51194/2023**

M/S MARVEL ENTERPRISES

.....Appellant

Through: Mr. R.K. Tarun, Mr. Hemant Jain and
Ms. Aditi, Advocates.

versus

KIRAN BAJAJ

.....Respondent

Through: Mr. Amit Singh Tanwar, Advocate.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

ORDER

11.11.2025

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1. This is an appeal filed by the appellant/ defendant against the order dated 25.05.2023 as per which an application under Order XXXVII Rule 4 of CPC for setting aside the *ex parte* decree dated 21.09.2019 was dismissed. The allegation is that the father of the appellant/ defendant was not keeping well and that he had certain cardiac ailments, as a result of which he was held up and was not in a position to contact his lawyer who was appearing on his behalf. Hence, the prayer is that the impugned order may be



set aside and he may be given an opportunity to obtain an order on merits.

2. Learned counsel for the respondent/ plaintiff objects to the setting aside of the impugned order on the ground that there are no materials to substantiate the allegation that the father of the appellant/ defendant was having any cardiac issues which prevented him from contacting his lawyer and giving necessary instructions. My attention is drawn to the impugned judgment in which the learned trial judge has referred to the documents that have been produced by the appellant/ defendant, which are of the year March, 2020. Therefore, it is submitted that these documents are much after the passing of the decree and, therefore, said documents would not, in any way, advance the case of the appellant/ defendant.

3. Heard both sides.

4. It is true that the medical document relating to admission of the father of the appellant/ defendant is dated 24.03.2020. The



earlier document that is produced is dated 02.01.2019 which shows that the father of the appellant/ defendant had consulted a doctor for complaints of fever. It is true that this document does not show that father of the appellant/ defendant was having any cardiac issues. However, the materials on record does show that father of the appellant/ defendant passed away on 28.03.2020. After the appellant/ defendant was set *ex parte*, he approached the trial court for setting aside the *ex parte* decree within a period of about 46 days. He has no case that he has not received summons. However, he has furnished a reason for his inability to contact the lawyer and to give necessary instructions.

5. In the facts and circumstances of the case and in the interest of justice, I find that the appellant/ defendant must be given an opportunity to obtain an order on merits. However, that order will be subject to the payment of costs of Rs. 25,000/- to the respondent/ plaintiff which shall be paid within a period of one month from the date of this order.



6. In the result, the impugned order and judgment dated 25.05.2023 and 21.09.2019 respectively are set aside. The appellant/ defendant may move the trial court in accordance with Order XXXVII Rule 4 of CPC. It is made clear that the appeal shall stand allowed only on compliance of the aforesaid condition. If not, the appeal shall stand dismissed.

CHANDRASEKHARAN SUDHA, J

NOVEMBER 11, 2025

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