



2025:DHC:10882



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 02.12.2025***+ **FAO 338/2022 and CM APPL. 56604/2022****ASHMA KHATOON**AppellantThrough: **Mr. Javed Ahmad, Advocate.**

versus

SH. AKHTAR HUSSAIN & ORS.RespondentsThrough: **Mr. M.L. Yadav, Mr. Harish Chand,
Mr. Anant Chittoria, Mr. P.C. Arya
and Mr. Prashant, Advocates.****CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. This is an appeal against the order dated 04.06.2019 passed by the trial court in M DJ No. 245/2019 by which the application filed by the defendant no.1 in C.S no. 959/2016 under Order IX Rule 13 Civil Procedure Code, 1908 (the CPC) was dismissed.

2. In the application filed under Order IX Rule 13 CPC it was alleged that the defendant no.1 was quite old and an illiterate lady



suffering from various ailments due to which she was unable to contact her lawyer. It was also alleged that an application filed by her under Order VII Rule 11 CPC was pending for consideration before the trial court. As she was unable to contact her lawyer due to her several ailments, she was not able to give necessary instructions to her counsel as a result of which she was set *ex-parte* on 18.09.2018 and, thereafter on 04.06.2019 an *ex-parte* decree was passed against her. Hence, the application under Order IX Rule 13 CPC for setting aside the *ex-parte* decree.

3. The application under Order IX Rule 13 CPC was accompanied by an application under Section 5 of the Limitation Act 1963 seeking condonation of delay of 139 days in filing the application.

4. The respondent/plaintiff filed objections contending that there are no sufficient reasons or cause shown for either condoning the delay or for setting aside the *ex parte* decree.

5. The trial court after hearing both the parties vide the



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impugned order, dismissed the application by finding that the defendant no.1 was repeatedly absenting herself and that no sufficient cause has been made out for setting aside the *ex parte* decree or for condonation of delay. Holding so, the applications were dismissed. Aggrieved, defendant no.1 has come up in appeal.

6. It is submitted by the learned counsel for the defendant no.1 that it was because the latter was suffering from various ailments, she was unable to contact her lawyer and that she got knowledge about the decree only on 14.09.2019. Hence, a lenient view may be taken and the impugned order may be set aside. Per contra, it is submitted by the learned counsel for the respondent/plaintiff that no sufficient reasons have been made out and so the trial court was justified in dismissing the applications and that there is no infirmity in the impugned order calling for an interference by this Court.

7. Heard both sides.

8. The records reveal that the appellant/defendant no.1 was



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first set *ex-parte* in August 2014, which admittedly was set aside pursuant to which the appellant/defendant No.1 had filed her written statement also. Thereafter, she again absented herself and hence she was set *ex-parte* for the second time on 18.09.2018. It is alleged in the application for setting aside the *ex-parte* decree dated 04.06.2019 that she came to know about the same only 14.09.2019 when she received the notice in the execution petition. This is apparently an incorrect statement because it is clear from the records that summons had been served on the appellant/defendant no.1, pursuant to which she had appeared before the trial court. Subsequently she was set *ex parte*, which order was admittedly set aside by the trial court and she was permitted to defend the case. She again absented herself and so the trial court set her *ex parte* and proceeded to pass the decree.

9. As noticed earlier, the reason cited for non-appearance is that she was suffering from several ailments. What exactly was the ailment(s) has not been specified in the application. No reason(s)



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is/are given as to why the lawyer concerned was unable to appear before the Court. The appellant/defendant no.1 has no case that the trial court had insisted on her personal presence before the court, as she had already engaged a lawyer. He could have appeared before the court and sought adjournment if that was necessary. The material(s) on record do not reveal any justifiable reason(s) for the appellant/defendant no.1 absence. The repeated applications for setting aside the *ex parte* orders seem to be a delaying tactics. The trial court, in the circumstances, was justified in passing the impugned order. I find no infirmity in the order calling for an interference by this Court.

10. The appeal, sans merits, is thus dismissed.

11. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 02, 2025/mj