



2025:DHC:11439



\$~19

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

% ***Date of decision: 15.12.2025***

+ **FAO 317/2023, CM APPL. 63178/2023, CM APPL. 68881/2025 &
CM APPL. 68880/2025**

JAGDEV YADAV

.....Appellant

Through: Mr. Sanjay Kumar, Mr. Manoj Kumar
Verma and Mr. Yudhister Sharma,
Advocates.

versus

LOKESH GUPTA & ORS.

.....Respondents

Through: Ms. Neeraj Rathee and Mr. Rajeev
Saini, Advocates.

CORAM:**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. This is an appeal under Order XLIII Rule 1 and Section 104 of the Code of Civil Procedure, 1908, filed by the defendant no. 4 in Misc. Application No. 850/2022 on the file of ADJ-03, Rohini Courts, North District, Delhi, aggrieved by the order dated 23.01.2023 by which his application for setting aside the *ex parte*



order dated 12.07.2022 was dismissed.

2. According to the appellant/defendant no. 4, he never received summons in the case, and therefore, he was unaware of the proceedings that had been initiated by respondent no. 1/plaintiff. It was also alleged that the other respondents, namely defendant no. 1 and 2, who are his parents and his brother, defendant no.3, were conniving against him as a result of which, they also did not inform him about the proceedings. His non-appearance before the Court was not deliberate and hence, the petition for setting aside the *ex parte* decree.

3. The application was opposed by respondent no. 1/plaintiff who contended that summons was, in fact, served on the defendant no. 4 and therefore, there is no reason for setting aside the *ex parte* order.

4. The trial court, after considering the materials on record and after hearing both sides, dismissed the application, holding



that summons was, in fact, served on the appellant/defendant no. 4. Aggrieved, the defendant no. 4 has come up in appeal.

5. It is submitted by the learned counsel for the appellant/defendant no. 4 by referring to Order V Rule 17 CPC that even assuming that the summons was refused to be accepted, affixture as contemplated under said rule was mandatory. However, the process server has not effected service by affixture, and therefore, there is no proper service. In support of the argument, he relies on the dictum in **Madan vs. Ramvati Rameshvara 2020 Volume 1 Maharashtra Law General 951**.

6. *Per contra*, it is submitted by the learned counsel for the respondent no. 1/plaintiff that there is no infirmity in the order of the trial court calling for an interference by this Court.

7. Heard both sides.

8. From the impugned order, it is seen that summons was sent to the appellant/defendant no. 4 *via* post as well as through the



2025:DHC:11439



process server. The report of the process server shows that the daughter of the appellant/defendant no. 4, who was present there, refused to receive the summons. The appellant/defendant no. 4 has no case that the said report of the process server is false or fabricated. He also does not have a case that the address shown in the summons is wrong. Official acts are presumed to have been regularly performed as contemplated under Clause (e) of Section 114 of the Evidence Act, 1872. Even assuming for a moment that the summons was not properly served, it is seen from the impugned order that summons issued through posts was also attempted to be served on the appellant/defendant no. 4. However, the same returned with an endorsement by the postal official concerned that it was refused. The appellant/defendant no. 4 has no case that the postal address shown is wrong or that the endorsement made by the postal official concerned is incorrect or false. In such circumstances, the service is presumed to have been



2025:DHC:11439



effected unless a different intention is shown to appear. (Section 27 of the General Clauses Act, 1897). No such different intention has been shown.

9. In the aforesaid circumstances, I find that the allegation of the appellant/defendant no. 4 that summons was never served on him is apparently incorrect. I do not find any infirmity in the order of the trial court calling for an interference by this Court.

10 The appeal is dismissed. Application(s), if any pending, shall stand closed.

11. The date before the Joint Registrar on 13.02.2026 shall stand cancelled.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 15, 2025

mj