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

% **Date of decision: 17th March, 2025**

+ **FAO 339/2023 and CM APPL. 66829/2023 – STAY**

SMT. MANJU BHARDWAJAppellant
Through: Mr. Pramod Kumar, Ms. Mukta
Sharma, Advs.

versus

SHRI CHANDER MOHAN THROUGH LRSRespondent
Through: Mr. Ravi Bassi, Mr. Sanyam
Malik, Mr. Akshat Dhawan,
Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This appeal is preferred by the appellant/defendant under Order XLIII Rule 1 read with Sections 41 and 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”], assailing the impugned order dated 24.03.2023 passed by the learned trial Court/Executing Court, West District, Delhi in Misc. No. 44/2023 titled as ‘*Chander Mohan v. Mrs. Manju Bhardwaj*’, thereby rejecting the application filed by the appellant/defendant under Order IX Rule 13 of the CPC.

2. Having heard the learned counsels for the parties and upon perusal of the record, this Court has no hesitation in finding that the present appeal is bereft of any merits.

3. First things first, it would be expedient to reproduce the findings recorded by the learned trial Court, which go as under:

“7. The main case file of civil suit bearing no.208/2016 (old number) and CIS No.1 1658/2016 was summoned for consideration



on present application. Perusal of the records of main case file reveals that the summons of the suit were served upon the son of the applicant/defendant on 27.02.2018. The applicant/defendant chose not to appear and was proceeded ex parte vide order dated 26.07.2016. The plaintiff side was examined in ex-parte evidence on 06.04.2017. The suit was dismissed for non-appearance of plaintiff on 10.01.2018. Plaintiff moved an application under Order 9 Rule 4 CPC, notice of same was served upon defendant and the application was finally allowed vide order dated 26.07.2018. Finally vide order dated 04.08.2018, the ex parte decree was passed against the applicant/defendant. In given circumstances, it is clear that defendant was served with the summons of the suit and despite same, defendant chose not to appear. Defendant was also served with the notice of application under Order 9 Rule 4 CPC. Defendant even chose not to appear and contest the said application. It is clear that the defendant deliberately avoided appearance before the Court despite service. No reason has been furnished which could constitute sufficient cause for non-appearance in any manner. Hence, application is totally devoid of merits. It appears that the applicant vide this application has only tried to make a belated and futile attempt to get the matter reverted back to the stage of filing of WS after receiving of notice of execution petition. Hence, the application in question stands rejected.”

4. Shorn of unnecessary details, the respondent/plaintiff instituted a suit for the recovery of Rs. 13,72,000/-, along with *pendente lite* and future interest, against the appellant/defendant. As the appellant/defendant apparently failed to appear and contest the matter, the suit resulted in an *ex parte* judgment and decree dated 04.08.2018. The record reveals that the appellant/defendant filed the present application under Order IX Rule 13 of the CPC on 31.01.2023, primarily asserting that she was never served with summons for the settlement of issues in the main suit.

5. Learned counsel for the appellant/defendant vehemently contended that the address of the appellant/defendant was mentioned in the plaint as 66/67, 2nd Floor, Vani Vihar, Uttam Nagar, Delhi, which was incorrect, as



the said building comprises 16 residential units across four floors. It was strongly argued that the suit was dismissed in default on 10.01.2018, and while the appellant/defendant did receive notice of the application under Order IX Rule 4 of the CPC, no fresh summons for the settlement of issues were issued to her after the suit was restored.

6. *Per contra*, learned counsel for the respondent/plaintiff contended that the present appeal is a gross abuse of the process of law. Referring to the certified copy of the summons on record, it was pointed out that the summons were served upon the appellant/defendant through her daughter, Neha, aged about 18 years, on 21.05.2016. Furthermore, summons were also sent *via* registered AD post, and the AD card indicates that they were received by Mr. Mohit, son of the appellant/defendant, on 26.07.2016, as evidenced by the signatures on the AD card. It was further noted that the appellant/defendant has not denied the existence of her daughter, Neha, or her son, Mohit.

7. It was thus contended that, given the due service of summons upon the appellant/defendant, she was proceeded *ex parte* on 26.07.2016 due to her deliberate failure to appear and contest the matter. It was further submitted that although the suit was dismissed in default on 10.01.2018 due to the non-appearance of the respondent/plaintiff, notice of the application under Order IX Rule 4 of the CPC was duly served once again upon Mr. Mohit, son of the appellant/defendant, on 27.02.2018. As the appellant/defendant failed to appear despite such service, the learned trial court proceeded to pass the impugned *ex parte* judgment dated 04.08.2018 in accordance with law.

8. While the learned counsel for the appellant/defendant has not refuted



the aforesaid position, what turns the table against the appellant/defendant is that, during the execution proceedings initiated by the respondent/plaintiff/decreed holder, as per the certified copy of the order sheet in Execution No. 256/2019, one Mr. Ajay Sharma appeared on behalf of the judgment debtor on 17.01.2022. His submission was recorded to the effect that he was unaware of the judgment passed in the matter.

9. The case was then adjourned to 04.04.2022, on which date Mr. Ajay Sharma, Advocate, appeared for the Judgment Debtor and filed his *vakalatnama*. The order dated 04.04.2022 further recorded that warrants for the attachment of the Judgment Debtor's movable properties had been issued; however, as per the Bailiff's report, the attached property belonged to the Judgment Debtor's daughter-in-law. Consequently, the Judgment Debtor was directed to file an affidavit furnishing details of assets and liabilities by the next date of hearing, i.e., 23.05.2022. It appears that execution proceedings continued, and, notably, on 16.12.2022, Mr. Pramod Kumar, Advocate—who is also representing the appellant/defendant in the present appeal—appeared for the Judgment Debtor and filed his *vakalatnama*.

10. The bottom line is that while there is no weight in the plea advanced by the appellant/defendant that she was not initially served with the summons of the suit, another aspect that goes against her is that despite becoming aware of the *ex parte* judgment on 17.01.2022, the application under Order IX Rule 13 of the CPC was filed on 31.01.2023.

11. For the aforesaid reasons, this Court is unable to find any illegality, perversity or incorrect approach adopted by the learned trial Court in dismissing the application under Order IX Rule 13 of the CPC. Hence, the



present appeal is dismissed.

12. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MARCH 17, 2025 / *Sadiq/SS*