



2025:DHC:7737



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Date of Decision: 02<sup>nd</sup> September, 2025**  
+ **FAO 243/2025, CM APPL. 55306/2025, CM APPL. 55307/2025 &**  
**CM APPL. 55308/2025**  
**SH. RAMBIR**

.....Appellant

Through: Mr. Suresh Chandra S. and Mr. Anil  
Kumar Jangra, Advocates.

versus

**SH. HEMANT VERMA**

.....Respondent

Through: None.

**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Appellant suffered an *ex parte* decree.
2. He moved an application under Order IX Rule 13 CPC read with Section 151 CPC seeking to set aside such *ex parte* judgment and decree dated 10.02.2015.
3. His such application has been dismissed by the learned Trial Court on 15.05.2025.
4. Such order has been challenged by virtue of present appeal.
5. This Court has gone through the impugned order which not only records its reasons about appellant not approaching the Court at the earliest available opportunity but also takes note of the specific *service reports* and then comes to conclusion that the defendant was duly served with the summons and that there was no reason to disbelieve specific reports of the *concerned postman* and the *process server*, who were public servants.



6. The suit in question was though filed under *summary procedure* but it was converted into an ordinary suit *vide* order dated 11.10.2013 and summons were issued to the defendants. On the basis of refusal report and the fact that no written statement had been filed by the defendant, the defendant was proceeded against *ex parte* on 20.12.2013 and, thereafter, on the basis of the evidence led by the plaintiff, there is a decree of Rs.5,52,000/- with cost and interest, in favour of the plaintiff.
7. Such decree is dated 10.02.2015.
8. The defendant, however, filed an application under Order IX Rule 13 CPC as late as in April, 2024. In his such application, he contended that he learnt about the *ex parte* judgment only when he had received summons from fast-track Court Muzaffarnagar, Uttar Pradesh in relation to the Execution Petition in question.
9. Since the defendant was not having any assets within jurisdiction of Delhi, the execution seems to have been transferred to Muzaffarnagar.
10. The other contention of the defendant/judgment debtor was to the effect that there was never any attempt to serve him at his residential address and there was no occasion for him to have received any process at his shop as he had already vacated the same and was not available at his shop on the given dates i.e. 16.11.2013 and 18.11.2013.
11. Obviously, the abovesaid application has been filed after nine years of passing of the *ex parte* judgment and the learned Trial Court took note of the fact that though, according to judgment debtor, he learnt about the *ex parte* judgment when he received summons from the Executing Court situated at Muzaffarnagar, U.P., he never bothered to mention as to on which such date, he learnt about the *ex parte* judgment.



12. It also noticed that the certified copies of the Execution Proceedings pending before the Muzaffarnagar Court were placed on record which rather indicated that *vakalatnama* by his counsel had been filed way back on 28.11.2022 and despite that, the abovesaid application seeking to set aside *ex parte* decree was filed as late as on 22.04.2024.

13. Thus, apparently the delay was not explained in any manner whatsoever.

14. As far as the service upon the defendant is concerned, the learned Trial Court noticed that the summons were duly served by observing as under:-

“16. The application under Order 9 Rule 13 CPC deserves dismissal even on merits. From the record it is revealed that the summon under Order 37 CPC issued to the applicant/JD through registered post for 20.12.2013 at his shop’s address has been received back undelivered with the report *“Intimation given at the shop”* dated 16.11.2013 and again *“Refused, return to sender”* dated 18.11.2013. It is further revealed that the summon issued to the applicant/JD on 23.08.2013 through District Judge, Muzaffarnagar, U.P., at the shop’s address of the applicant/JD has been received back with the report. *“The addressee met, who after going through the contents of the same contacted his counsel telephonically and after consulting his counsel he refused to receive the summon. Copy of the summon was affixed on the western direction of the shop”*. The summon was also sent at the residential address of the applicant/JD, which was received back with the report *“Date expired”*. Hence, the reports on record sufficiently establish that summon under Order 37 CPC was duly served through process server to the applicant/JD at his shop’s address. The report on summon sent through registered post also reveals that the summon was refused by the applicant/JD at the shop’s address and intimation was duly given to him. Pertinently, the applicant/JD has not disputed that the shop’s address given in the memo of parties is the correct address. He has neither



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mentioned the date when he had vacated the shop in question nor produced any document pertaining to vacation of the said shop. In the absence of any material on record to that effect and failure on his part even to mention the specific month and year in which he had vacated the shop in question, there is no reason to disbelieve the report of the postman and the process server who are the public servant.”

15. As noticed, the judgment debtor does not dispute that it was his shop’s address. He has, merely, verbally asserted that he had left the abovesaid shop prior to the abovesaid alleged date of service but no documentary proof with respect to his such assertion was placed on record.

16. The onus in this regard cannot be said to be discharged, merely, by way of oral assertion and, therefore, this Court does not find any reason to interfere with the impugned order which seems to have been passed after appreciating the facts in the most judicious manner.

17. The appeal is, accordingly, dismissed *in limine*.

18. The pending applications also stand disposed of in aforesaid terms.

**(MANOJ JAIN)**  
**JUDGE**

**SEPTEMBER 2, 2025/ss/shs**