



2025:DHC:10397



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 21.11.2025***

+ **FAO 330/2024 & CM APPLs. 73324-73325/2025**
SH. ATUL KUMAR NANGIAAppellant

Through: Mr. Sajan K. Singh, Ms. Sangeeta
Singh and Mr. Himanshu, Advocates

versus

SH. BALDEV RAJ WADHWARespondent
Through: Mr. M.K. Sharma and Mr. Ravinder
Singh, Advocates

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT (ORAL)

CHANDRASEKHARAN SUDHA, J.

1. The present appeal is directed against Annexure A-1 order dated 19.07.2024 passed by the learned Additional District Judge-5, (West District), Tis Hazari Courts, Delhi in Misc. DJ 318/2022, by which the application filed by the defendant in CS No. 598/2018 under Order IX Rule 13 of the Civil Procedure Code, 1908 (the CPC) to set aside the *ex-parte* judgment and decree dated 30.01.2020 was dismissed. The appellant/defendant



challenges the said dismissal and submits that he was never duly served in the suit, and therefore the *ex-parte* decree cannot be allowed to stand.

2. The brief facts necessary for the disposal of this appeal are:- The respondent/plaintiff instituted a suit for specific performance of an agreement to sell. Summons in the suit was directed to be issued to the appellant/defendant for 30.09.2019. Annexure A-5 report of the process-server says that on visiting the appellant/defendant's residential address, the summons was accepted by the appellant/defendant's father. The appellant/defendant did not appear before the trial court on the returnable date. Hence, his right to file a written statement was closed, and as he continued to remain absent, he was proceeded *ex-parte* on 07.12.2019. The suit was thereafter decreed in favour of the plaintiff on 30.01.2020.

2.1 The appellant/defendant moved an application under Order IX Rule 13 CPC stating that he was unaware of the



pendency of the suit, as he and his father were not on good terms, his father never informed him of the service of summons. Moreover, service of summons on the father is not in accordance with Order V Rule 15 CPC. It was also urged that the trial court had directed service of summons through all three modes—ordinary, registered post A.D., and courier—but the plaintiff took steps only for ordinary service. According to the appellant, the non-compliance with the trial court's order mandating service through all three modes, renders the service defective.

3. The learned counsel for the appellant/defendant would submit that the trial court could not have treated service upon the appellant/defendant's father as proper service, particularly when the appellant/defendant and his father were not on cordial terms and the father never communicated the receipt of the summons to the appellant/defendant. The learned counsel contends that the fact that all three modes were directed by the trial court indicates that service by one mode alone could not be treated as sufficient



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compliance. Reliance is also placed on the judgment of this Court in **Bulganin v. Apex Apartments Pvt. Ltd. 2001 IV AD (DELHI) 1931**, wherein it has been held that when the Court directs multiple modes of service, such directions must be strictly complied with and failure to effect service through each mandated mode cannot be treated as a mere irregularity. It is therefore argued that, in the present case, the appellant/defendant was not served in accordance with law, had no knowledge of the proceedings, and that the *ex-parte* decree deserves to be set aside under Order IX Rule 13 CPC.

4. *Per contra*, it is submitted by the learned counsel for the respondent/plaintiff that Annexure A-5 report would make it clear that summons was in fact served on the appellant/defendant and hence, the allegation that summons was not served and that he was unaware of the filing of the suit is incorrect and that no sufficient reason is made out for setting aside the impugned order. It is submitted that the summons served at the correct residential



address of the appellant/defendant was received by his father, who admittedly resides with the appellant/defendant. It is contended that service upon an adult member of the family residing with the appellant/defendant is valid service under Order V Rule 15 CPC, and therefore, even assuming that the appellant was personally absent at the time of service, service upon his father constitutes due service in the eye of law.

5. Heard both sides.

6. On going through the records, it is seen that the trial court did order summons by all three modes. Annexure A-5 report shows that summons was in fact served on the father of the appellant/defendant. Order V Rule 15 CPC deals with the situations in which service may be made on an adult member of the defendant's family. It says that where in any suit the defendant is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has



no agent empowered to accept service of the summons on his behalf, the service may be made on any adult member of the family, whether male or female, who is residing with him. According to the learned counsel for the appellant/defendant, there is no report of the process server to the effect that there “was no likelihood of the appellant/defendant being found at the residence within a reasonable time” and hence, service on the father is not proper service. I am afraid, I cannot agree to this argument.

7. The appellant/defendant has no case that the address shown in the summons is not his address or that it is wrong. He has also no case that his father is not residing with him. Further, he has also no case that the report of the process server is false or fabricated.

8. Relying on the dictum of **Bulganin** (*supra*), it was argued that all three modes of service ought to have been complied with. In **Bulganin** (*supra*), the Court was dealing with a situation where the service itself was suspicious; the process-server’s report was



doubtful; no steps were taken for service by registered post despite specific directions, and there was no reliable service on any family member. In contrast, in the present case, the address is admitted; the residence of the father is admitted, and there is no allegation that Annexure A-5 report of the process server is fabricated. None of the suspicious circumstances that weighed with the Court in **Bulganin** (*supra*) exist here.

9. Further, Section 114 [illustration (e)] of the Indian Evidence Act, 1872 permits the Court to draw a presumption that official acts have been regularly performed. There is nothing on record to rebut such presumption in respect of Annexure A-5. Therefore, the reliance on **Bulganin** (*supra*) is misconceived. The non-compliance of the remaining modes does not invalidate service effected under Order V Rule 15 CPC because the purpose of issuing and serving summons on a person is to see that he has notice of the proceedings initiated against him. In this case, there has been sufficient service as the process server in the absence of



the appellant/defendant had served the summons on his father. He has no case that despite his presence, the process server deliberately did not serve the summons on him. Moreover, the second proviso to Order IX Rule 13 CPC says that even if there is any irregularity in the service of summons, the same shall not be a ground for setting aside the *ex-parte* decree if the Court is satisfied that the defendant had notice of the proceedings. In this case it is apparent that the appellant/defendant certainly had notice of the proceedings.

10. It is also significant to note that the appellant/defendant has not disclosed the date on which he claims to have acquired knowledge of the decree in his application under Order IX Rule 13 CPC. The judgment and decree is dated 30.01.2020. The application under Order IX Rule 13 CPC is seen filed only on 07.06.2022, apparently after more than two years of the judgment and decree. The omission to state the date is material and fatal, as the date of knowledge is an essential element in assessing whether



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sufficient cause has been made out for setting aside an *ex-parte* decree.

11. I find no infirmity in the order of the trial court calling for an interference by this court.

12. The appeal *sans* merit is thus dismissed. Application(s), if any, pending shall stand closed.

13. The date already fixed, i.e. 19.02.2026 shall stand cancelled.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 21, 2025
p'ma/RN