



2025:DHC:9163



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

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Date of Decision: 15.10.2025

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CM(M) 1998/2025 & CM APPL. 64793/2025

SOHN SINGH

.....Petitioner

Through: Mr. Amrik Singh, Advocate (*through videoconferencing*)

versus

DILDAR SINGH

.....Respondent

Through: Mr. Deepak Mittal, Advocate (*through videoconferencing*)**CORAM: JUSTICE GIRISH KATHPALIA****ORDER (ORAL)**

1. The petitioner/defendant has assailed order dated 08.09.2025 passed by the learned trial court, whereby in the suit for recovery of loan amount, application of the petitioner/defendant under Order XIII Rule 17 CPC (*treated by the court as under Order XVIII Rule 17 read with Section 151 CPC*) was dismissed.
2. Learned counsel for respondent/plaintiff, appearing on advance intimation accepts notice and strongly opposes the application.
3. At request of both sides, I have heard final arguments at this stage itself.
4. Broadly speaking, the petitioner/defendant moved the above mentioned application seeking an opportunity to recall plaintiff/PW1 for cross-examination. In the application itself, the petitioner/defendant laid

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grounds dealing with his failure to appear on multiple dates. After examining the entire record, learned trial court dismissed the application by way of order impugned in this petition.

5. Learned counsel for petitioner/defendant submits that on the night intervening 17.11.2024 and 18.11.2024 he suffered an accident, so sought adjournment on 20.11.2024, which was allowed by the trial court. Thereafter, on 21.02.2025 lawyers were on strike, so he did not appear and matter was adjourned to 15.05.2025. It is submitted by learned counsel that on 15.05.2025 he had requested a proxy counsel to seek pass over, but the same was not allowed by the trial court and cross-examination of PW1 was closed, posting the matter to 12.08.2025. According to learned counsel for petitioner/defendant, on 12.08.2025 he got late in reaching the court, so right to lead defendant's evidence also was closed. It is thereafter, that the petitioner/defendant filed the application, which was heard on 03.09.2025 and dismissed by way of the impugned order dated 08.09.2025. It is contended by learned counsel for petitioner/defendant that he has good case on merits, so another opportunity be granted.

6. On the other hand, learned counsel for respondent/plaintiff strongly objects to any further opportunity, disclosing that even prior to 20.11.2024, the petitioner/defendant took a number of adjournments on frivolous grounds. Learned counsel for respondent/plaintiff submits that the petitioner/defendant took as many as 11 adjournments, with the sole aim to delay the suit proceedings.

7. Perusal of record reflects that on 20.11.2024, the learned trial court

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allowed adjournment request of proxy counsel for petitioner/defendant on the ground that he had met with an accident few days back.

8. On the next date, 21.02.2025, none appeared for the petitioner/defendant. The explanation advanced on behalf of petitioner/defendant for default in appearing on 21.02.2025 is that lawyers were on strike. It has been repeatedly held by the Supreme Court as well as all High Courts across the country that strike by lawyers is not a justified ground for defaults. The courts are never on strike.

9. On 21.02.2025, the matter got adjourned to 15.05.2025, but that day also none appeared for the petitioner/defendant. Claim of learned counsel for petitioner/defendant that on 15.05.2025, a proxy counsel appeared on his behalf and sought passover which was denied, is contrary to record. As per order dated 15.05.2025, none appeared on behalf of present petitioner/defendant on that day. The judicial record is sacrosanct. If proceedings are not correctly recorded in the ordersheet, the party concerned must immediately move the same court for rectification, failing which the party concerned cannot be allowed later to challenge correctness of the contents of ordersheet. Admittedly, the petitioner/defendant never approached the trial court, seeking rectification of order dated 15.05.2025 to the effect that a proxy counsel on behalf of petitioner/defendant had appeared and had requested for passover, which was declined.

9.1 Rather, as recorded in order dated 15.05.2025, even cost dated 13.09.2024 remained not paid despite lapse of 08 months, so the learned trial court closed the right to cross-examine PW1 and posted the matter for

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defendant's evidence on 12.08.2025.

10. The default dated 15.05.2025 was not just *qua* appearance on behalf of the petitioner/defendant. The default was also *qua* failure to pay cost dated 13.09.2024, for which there is not even a whisper of explanation. On this aspect, the Supreme Court clearly held in the case of **Manohar Singh vs. D.S. Sharma**, (2010) 1 SCC 53 that in terms of Section 35B of Code of Civil Procedure, the consequence of failure to pay costs is that the defaulting party has to be stopped from participating further in the proceedings. That being so, closure of right to cross-examine PW1 on 15.05.2025 was completely justified not only on the ground of default in appearance on behalf of petitioner/defendant, but also on account of failure to pay cost. Interestingly, till date, the said cost dated 13.09.2024 remains not paid and there is not even a whisper to explain as to why that cost was not paid across this period of more than one year.

11. On 15.05.2025, the matter was adjourned to 12.08.2025 for defendant's evidence. On that day, learned counsel for petitioner/defendant appeared before the trial court but again did not pay the cost dated 13.09.2024 and even did not file evidence affidavit of DW1, so learned trial court closed the right of defendant to lead evidence. This order also was perfect in the eyes of law cited above on Section 35B of the Code.

12. On 12.08.2025, the matter was adjourned to 03.09.2025 by the trial court at specific request of learned counsel for petitioner/defendant. On 03.09.2025, the application of petitioner/defendant under Order XIII Rule 17 CPC was heard and treated as application under Order XVIII Rule 17 CPC

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and dismissed by way of the impugned order.

13. On 08.09.2025, the above mentioned application was dismissed by way of the impugned order and matter was posted by the trial court on 27.09.2025 (*as informed today by both sides*) and on that day, adjournment was taken on behalf of petitioner/defendant on the ground of illness of arguing counsel. Now the matter stands fixed for final arguments tomorrow (16.10.2025), as informed by both sides.

14. The above conspectus amply shows the blatant and deliberate design on the part of petitioner/defendant to continue to protract the trial court proceedings, which is with the obvious aim to frustrate the respondent/plaintiff into giving up the *lis*. Where a party not just defaults in appearing but also contumaciously defies clearing the cost, consequences stipulated under Section 35B of CPC, reiterated by the Supreme Court in the above cited judicial pronouncement must follow. It is high time that paradigm be changed by courts and an impression across the society be dispelled that civil suits can be allowed to run for decades.

15. I find absolutely no infirmity in the impugned order, so the same is upheld and the petition is dismissed. Pending application stands disposed of.

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**GIRISH KATHPALIA
(JUDGE)**

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