



2025:DHC:340



\$~

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

%

22nd January, 2025

+ **CM(M) 3995/2024 & CM APPL. 71459/2024**

M/S SKYTECH CONSTRUCTION LTDPetitioner

Through: **Mr. Jatin Sapra, Adv.**

versus

ASHOK KUMAR SHARMARespondent

Through: **Mr. Yashvir Kumar and
Mr. M.R. Singh, Advs.**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (ORAL)

RAVINDER DUDEJA, J.

1. This is a petition under Article 227 of the Constitution of India, impugning the order dated 03.09.2024, passed by the learned District Judge in Civil Suit No. 349/2020, titled "Ashok Kumar Sharma Vs. M/s. Skytech Construction Pvt. Ltd.

2. Petitioner is the defendant in the suit for recovery filed by the respondent.

3. On 18.08.2023 while the case was fixed for plaintiff's evidence, no one appeared for the petitioner. The trial court passed the following order:-



2025:DHC:340



“18.08.2023

Present: Mr. Yashvir Kumar and Mr. M. R. Singh, Ld.
Counsels for plaintiff with plaintiff in person.
None for defendant.

Affidavit of plaintiff for his evidence is filed. It is stated by Ld. Counsel for plaintiff that advance copy of affidavit has already been supplied to opposite counsel through speed post.

Plaintiff is examined as PW-1. No one is appearing on behalf of defendant despite calls. It is 11:40 am. In the facts, by proceeding under Order 17 CPC; PW-1 is discharged.

Vide statement of plaintiff, PE is closed.

Put up on 04.11.2023 for final arguments.”

4. On 22.04.2024, petitioner filed an application under Order 9 Rule 13 CPC for recall of order dated 18.08.2023. The application was considered as one filed under Order 9 Rule 7 CPC and was dismissed vide order dated 03.09.2024.

5. Learned counsel for the petitioner has submitted that earlier counsel engaged by the petitioner was suffering from eye-flu and the father of the Director of the petitioner company was also not keeping well and due to this reason, no one from the company as well as the counsel appeared before the Court.

6. It is further submitted that previous counsel after regaining her health, came to know about the passing of the impugned order in April 2024, where after, the application was filed under Order 9 Rule 13 CPC (treated as under Order 9 Rule 7 CPC), therein, explaining all the facts and circumstances.



2025:DHC:340



7. Learned counsel further submits that the trial court has failed to consider the medical certificate of the then counsel and without appreciating that the counsel was advised 15 days rest to avoid exposure to any kind of light.

8. It is submitted that the non-availability of the counsel as well as the absence of the petitioner on the date fixed was neither wilful nor intentional, but because of circumstances beyond the control of the petitioner.

9. Per contra, learned counsel for the respondent submits that the conduct of the petitioner during the trial has not been good, inasmuch as, on previous occasions also i.e. on 07.02.2023 and 31.03.2023, no one appeared for the petitioner. It is further submitted that the written statement on behalf of the respondent was filed under the signatures of the Manager, Arun Kumar, and therefore, there is no reason as to why even the Manager was not present on behalf of the petitioner to seek an adjournment. It is argued that the petitioner wilfully did not appear so that the recording of the evidence gets adjourned.

10. As is apparent from the order dated 18.08.2023, trial court recorded the statement of PW-1 and proceeded under Order 17 CPC and discharged PW-1.

11. Order 17 Rule 2 CPC provides the procedure if parties fail to appear on the date fixed. It states that where on any day to which the hearing of the suit is adjourned, the parties or any of them fail to



2025:DHC:340



appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order 9. The explanation to Rule 2 provides that where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the court may, in its discretion proceed with the case as if such party was present.

12. Order 9 Rule 7 CPC provides the procedure where the defendant appears on the day of adjourned hearing and assigns good cause for previous non-appearance. It provides that where the court has adjourned the hearing of the suit, ex-parte and the defendant, at or before such hearing appears or assigns good cause for his previous non-appearance, he may upon such terms as the court directs or to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

13. As per discharge summary of the then counsel Ms. Deeksha Sharma, she was admitted in the hospital on 05.08.2023 on account of eye-flu and was discharged on 06.08.2023. Even though, she was prescribed medicines for approximately 15 days, but the discharge summary does not reveal that she was advised any kind of bed-rest, due to which, she could not have attended the court hearing.

14. Be that as it may, even if the lawyer was not available, the Director/other staff/Manager of the company could have represented



2025:DHC:340



the petitioner in the court case. A litigant cannot abandon the responsibility to track his case after entrusting the same to a lawyer.

15. No medical record of the father of the Director of the petitioner has been placed on record to show that he was suffering from any serious ailment or was lying admitted in Apollo Hospital, as has been argued.

16. Petitioner has failed to assign any good cause for its non-appearance before the Court on 18.08.2023. There is no legal infirmity or impropriety in the impugned order passed by the trial court. The Court finds no merit in the petition.

17. At this stage learned counsel for the petitioner submits that trial court has fixed the matter for final arguments and therefore, he may be granted liberty to file an application for grant of permission to lead defendant's evidence.

18. Petition is dismissed while granting the liberty as prayed for.

RAVINDER DUDEJA, J.

22nd January, 2025

RM