



2025:DHC:11401



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

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Judgment Reserved on: 10.12.2025

Judgment pronounced on: 16.12.2025

+ **FAO 342/2025, CM APPL. 77775/2025, CM APPL. 77776/2025 &
CM APPL. 77777/2025**

CHANDRA ABHISHEK RAJ SRIVASTAVAAppellant

Through: Mr. Gautam Narayan, Sr. Adv. With
Mr. Kumar Prashant, Ms. Asmita
Singh and Ms. Simran Chabra,
Advocates.

versus

DR. AKSHAY MEHRA AND ORSRespondents

Through: Mr. Manik Ahluwalia and Mr.
Devashish Boohankar, Advocates for
R-1 along with respondent no.1 in
person.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Order XLIII Rule 1 read with Sections 104 and 151 of the Code of Civil Procedure, 1908 (the CPC) has been filed by the defendant in MISC DJ No. 1004 of 2025 (IN CS No. 811 of 2019) on the file of District Judge – 04, Patiala House



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Courts, New Delhi, aggrieved by the order dated 15.09.2025, whereby his application under Order IX Rule 13 CPC and the application under Section of the Limitation Act, 1963 (the Limitation Act) for condonation of delay of 579 days in filing the application under Order IX Rule 13 were dismissed.

2. In this appeal, unless otherwise specified, the parties will be referred to as described in the plaint.

3. The plaintiffs filed the suit against the defendant for eviction, possession and mesne profits. According to the plaintiffs, the suit premises, a farmhouse, was given on lease to the defendant. The lease expired on 30.09.2019, whereupon the defendant was called upon to vacate the suit premises. However, the defendant refused to vacate the tenanted premises. Hence, the suit.

4. The defendant entered appearance and filed written statement *inter alia* seeking dismissal of the suit.

5. During the course of the proceedings, the plaintiffs filed an



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application under Order XII Rule 6 CPC seeking a decree for possession on the basis of the admissions made by the defendant in the written statement. The application was opposed by the defendant. The trial court, after hearing both sides, *vide* order dated 10.02.2021, allowed the application and the suit was partly decreed by granting possession of the tenanted premises to the plaintiffs. Subsequent to passing of the aforesaid order dated 10.02.2021, the defendant stopped appearing in the suit and hence, by order dated 09.12.2021, the defendant was set *ex-parte*, and ultimately an *ex-parte* judgement and decree was passed on 05.10.2023.

6. According to the defendant, his non-appearance was not with *mala fide* intentions. It was alleged that the defendant was in judicial custody in a case investigated by the Central Bureau of Investigation in RC no. 4(s) 2020 bearing Criminal Case No. 12687/2023, from 02.01.2020 and that he remained in judicial custody till January 2024 when he was enlarged on bail. As the



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defendant was in judicial custody, he was unaware of the suit proceedings and the fact that an *ex parte* decree and judgment had been passed against him. He became aware of the *ex parte* decree dated 05.10.2023 on 08.05.2025 only, after receiving notice in the execution petition bearing number 72/2025. Hence, the applications for setting aside the *ex parte* decree as well as the application for condonation of delay in filing the said application.

7. The plaintiff opposed the applications and contended that the allegation that the defendant became aware of the *ex parte* decree only on receipt of the notice of the execution petition is false. The defendant, through his counsel, had contested the suit till the suit was partly decreed whereby possession was granted to the plaintiff. There are no sufficient reason(s) for condonation of delay or for setting aside the decree, and hence they prayed for the dismissal of the applications.

8. The trial court, after hearing both sides, dismissed both applications. Aggrieved, the defendant has come up in appeal.



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9. Admittedly, the plaintiffs are the landlords of the suit property, i.e., a farmhouse, leased out to the defendant. The landlord and tenant relationship, and the rate of rent is not disputed. It is seen from the materials before this Court, that the defendant did contest the matter till the suit was partly decreed on 10.02.2021, by which possession was granted in favour of the plaintiffs. It is true as contented by the plaintiffs that no documents to evidence judicial custody of the defendants has been produced. But even assuming the said allegation of the defendant to be true, he was taken into judicial custody on 02.01.2020 and released some time in January, 2024. Though he was in custody, the suit had been contested on behalf of the defendant through his counsel till the suit was partly decreed. As to why the counsel for the defendant failed to appear thereafter has not been explained.

10. The allegation that the defendant came to know about the *ex parte* decree only when notice of the execution petition was received is absolutely false. The defendant on receipt of summons



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had entered appearance, filed written statement and through his lawyer contested the matter till the suit was partly decreed. He does not refer to the date on which he was released on bail, but he only makes a vague statement that he was released on bail in January 2024. Even thereafter, he does not seem to have made any enquiries whatsoever, regarding the suit which was pending at the time he was sent to judicial custody for which no reasons whatsoever have been furnished. Even assuming that the defendant was unable to contest because he was in judicial custody, he was released on bail in January 2024. However, the applications for setting aside the *ex parte* decree and the application for condonation of delay is seen filed only on 19.05.2025, that is, after more than a year, for which also no reasons have been given. Therefore, the trial court was perfectly justified in concluding that there are no plausible reasons or any reason for that matter to condone the delay or to set aside the *ex parte* decree.

11. It was quite persuasively submitted by the learned Senior



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Counsel for the defendant that despite the aforesaid conduct of the defendant, an opportunity may be given to the defendant to contest the case and obtain an order on the merits. According to him, the trial court has grossly erred in awarding mense profits for the period during which he was never in possession of the tenanted premises. At first blush, the argument seemed quite attractive and convincing to this Court. But as pointed out by the learned counsel for the plaintiffs, mense profits has been granted only till possession was taken over or possession was handed over to the plaintiffs in the execution proceedings pursuant to the decree granting them possession. The argument that for the period the defendant was in judicial custody, he is not liable for mense profits is quite untenable. The defendant has no case that possession of the tenanted premises had been handed over to the landlord by him at any point of time. Had he handed over possession, then his liability would have come to an end. It is submitted that the defendant could not hand over possession because he was in judicial custody.



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Even assuming that the defendant was in judicial custody, he was legally in possession of the tenanted premises and therefore, I do not find any infirmity in the trial court granting mense profits till the plaintiffs were given possession of the property.

12. I find no infirmity in the impugned order calling for an interference of this Court.

13. The appeal *sans* merits is dismissed. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 16, 2025/ABP