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

+ **CS(OS) 677/2017**

ARUN AGGARWAL

.....Plaintiff

Through: Ms. Kirti Mewar, Advocate.

versus

MUKESH KUMAR

.....Defendant

Through: Mr. D.V. Khatri, Ms. Anupama
Khatri and Mr. Harshad Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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04.07.2025

I.A. 9937/2025

1. This application is filed by the Plaintiff seeking condonation of delay of 07 days in filing the accompanying application for restoration.
2. For the reasons stated in the application, the same is allowed and delay is condoned.
3. Application stands disposed of.

I.A. 9936/2025

4. This application is filed on behalf of the Plaintiff under Order IX Rule 9 read with Section 151 of CPC for recall of order dated 07.03.2025, whereby the suit was dismissed for non-prosecution.
5. It is stated in the application that on 12.12.2023, Court had adjourned the matter for 08.04.2024. On 30.12.2023, staff of the Plaintiff, Mr. Harish Mishra collected the files of four cases from the office of counsel for the Plaintiff. Mr. Harish Mishra used to coordinate with the staff of the counsel



regularly in respect of the matters and as vacations were ongoing, Clerk of the counsel took the files and did not inform the counsel. On account of some communication gap between Mr. Mishra and the Clerk, all the four matters were deleted from the record as the Clerk presumed that the Plaintiff was interested in engaging some other counsel. Due to this confusion, counsel for the Plaintiff did not attend the hearing on 08.04.2024 and thereafter on 20.08.2024 and 08.11.2024.

6. It is further averred that on 08.11.2024 Court issued Court Notice to counsel for the Plaintiff, returnable on 30.01.2025, on receipt of which counsel's associate enquired from the Clerk, who informed that the files had been taken back and for this reason the counsel did not appear on 30.01.2025 and the suit was dismissed on 07.03.2025. On 19.03.2025, Plaintiff came to counsel's office to discuss a matter regarding his son and during the meeting, counsel enquired about the other cases, including the present suit. At this stage, Plaintiff clarified that he never intended to engage any other counsel and there was a confusion with the Clerk. Plaintiff's staff could not trace the hard copies of the files and soft copy was received by the Clerk of the counsel by e-mail dated 27.03.2025, whereafter present application was prepared on 01.04.2025. Plaintiff was travelling at that stage and the application was signed on 09.04.2025. Court was closed from 10.04.2025 to 13.04.2025 and thus the application was filed on 14.04.2025. In this backdrop, learned counsel for the Plaintiff seeks restoration of the suit on the ground that non-appearance on behalf of the Plaintiff was *bona fide* and on account of communication gap between the Clerk of the counsel and the Plaintiff.



7. Counsel for the Defendant *per contra* opposes the application and restoration of the suit. It is submitted that the averments in the application are false and fabricated. It is pointed out that while in the application it is stated in paragraph 9 that staff of the Plaintiff had collected the files from the office of the counsel on 30.12.2023, quite contrary thereto, Mr. Mishra in his affidavit filed in support of the application states that it was somewhere in March, 2024 that the Plaintiff asked him to get the files from the office of the lawyer and return back the files after making copies. It is also pointed out that while the application is dated 14.04.2025 as can be seen from the last page of the application, the affidavit of Mr. Mishra is verified on 09.04.2025 i.e., the affidavit was prepared and attested prior to the signing of the application, which, according to the counsel, is a serious matter.

8. Heard learned counsels for the parties.

9. Perusal of the order dated 07.03.2025 by which the suit was dismissed for non-prosecution shows that Plaintiff was unrepresented before the learned Joint Registrar on several dates i.e., 08.04.2024, 20.08.2024, 08.11.2024 and 30.01.2025. On account of the non-appearances, on 30.01.2025, learned Joint Registrar noted that Plaintiff had not complied with order dated 08.11.2024 as he neither filed reply to the application moved on behalf of legal heirs of Counter Claimant, being I.A. No. 13/2024 nor deposited the costs and no one was present to explain this position. Right to file the reply was thus closed. In the suit, it was noted that as per office note, Court Notice issued to counsel for the Plaintiff was duly served but even then, there was no appearance on behalf of the Plaintiff despite repeated calls. In this backdrop, at the request of the Defendant, matter was



placed before Court on 07.03.2025, for further directions. Be it noted that even on 07.03.2025 there was no appearance on behalf of the Plaintiff before the Court and the suit was dismissed for non-prosecution.

10. It is thus evident that Plaintiff has not prosecuted the suit diligently right from 08.04.2024. No steps were taken to file reply to the pending application or to pay the costs. On 30.01.2025, learned Joint Registrar called the matter several times, but Plaintiff was unrepresented. Despite the matter being listed before Court on 07.03.2025, no efforts were made by the Plaintiff to appear in the matter.

11. In the present application, the case set up by the Plaintiff is that on 30.12.2023, staff of the Plaintiff had taken away the four cases, which included the file of the present suit. This, as rightly flagged by counsel for the Defendant, is contrary to affidavit filed by Mr. Mishra, the staff of the Plaintiff, who purportedly took away the files, in which he states that the files were taken back only in March, 2024 and that too, only for preparing photocopies and were to be returned back to the counsel. It is not understood how, in light of this stand of the person who is stated to have taken the files, an averment can be made in the application that the files were taken on 30.12.2023. Obviously, the averment is false in light of the affidavit of Mr. Mishra.

12. Assuming for the sake of argument that the files were taken back by the staff of the Plaintiff, it is not explained why the Plaintiff did not make alternate arrangement for appearance on several dates, knowing that he had discharged the counsel on record. In fact, there is not a whisper in the application of the steps taken by the Plaintiff to engage another lawyer. If the Plaintiff had a change of heart and wanted to re-engage the present



counsel, the same should have been done on time, knowing that there was no appearance on four dates before the learned Joint Registrar and the matter was placed before Court on 07.03.2025 for further directions on account of non-appearance of the Plaintiff. There is also no explanation in the application as to whether counsel for the Plaintiff informed the Plaintiff of the Court Notice served on the counsel and if so, the steps taken by the Plaintiff to ensure that he was represented on the returnable date. Clearly, the averments in the application do not make out sufficient cause for recall of order dated 07.03.2025 and restoration of the suit. Law cannot help those who are not vigilant and diligent in prosecuting their cases and treat orders of the Court in a casual manner. This is besides the fact that the affidavit supporting the application is verified and attested on dated 09.04.2025, while the application is drafted and signed on 14.04.2025. No explanation is forthcoming to explain this position, which, as rightly pointed out by counsel for the Defendant, is indeed a serious matter.

13. In light of the aforesaid facts and circumstances, no ground is made out for restoration of the suit and the application is accordingly dismissed.

JYOTI SINGH, J

JULY 04, 2025/YA/RW