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

+ **FAO (COMM) 36/2026**

SH SATISH CHAND JAIN

.....Appellant

Through: **Dr. Sanjay Kumar Tiwary, Advocate**
(through VC).

versus

SMT PUSHPA GUPTA & ANR

.....Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

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03.02.2026

CM APPL. 7436/2026 (Condonation of Delay)

1. For the reasons stated in the Application, the delay of 15 days in filing the Appeal is hereby condoned. The same is allowed.
2. The Application stands disposed of.

CM APPL. 7435/2026 (Exemption)

3. Exemption is allowed, subject to all just exceptions.
4. The Application stands disposed of.

FAO (COMM) 36/2026 & CM APPL. 7434/2026 (Stay)

5. The present Appeal is filed under Section 13 of the Commercial Courts Act, 2015 for setting aside the order dated 07.11.2025 (“**Impugned Order**”) passed by the District Judge, (Commercial Court)-02, North-West District, Rohini Courts, Delhi (“**Commercial Court**”) in Misc. DJ No. 699/2025 an *ex-parte* Judgment dated 17.03.2025 in Civil Suit (Comm.) 521/2024 (“**Suit**”).



6. The Respondents filed the Suit for recovery of possession, arrears of rent, mesne profits against the Appellant before the learned Commercial Court. The Respondents contended in the Suit that the Appellant was inducted as a tenant in the property situated at D-4/1, Rana Pratap Bagh, Delhi- 110007 (“**Suit Property**”) vide Lease Deed dated 27.02.2024, which was registered with Sub-Registrar, Delhi on 26.03.2024. The tenure of lease was for a period of two years commencing from 01.01.2024 to 31.12.2025. The rate of rent agreed between the parties was ₹60,000/- per month for the first year and, thereafter, ₹63,000/- per month for the second year, excluding electricity and other miscellaneous charges, to be payable on fifth day of every month.

7. As the Appellant did not pay the agreed rent to the Respondents despite several requests to the Appellant, the Respondents issued legal notice dated 04.05.2024 terminating the tenancy and asking to pay the outstanding rent for the period from January, 2024 to May, 2024 and damages / penalty at ₹3,000/- per day w.e.f. 04.05.2024. Despite the legal notice, the Defendant did not vacate the Suit Property and also did not pay any rent. Accordingly, the Respondents filed the Suit seeking decree of possession of the Suit Property and permanent injunction restraining the Appellant from alienating or parting with the possession of the Suit Property or creating any third-party rights therein. Further, the Suit also prayed for the decree in the sum of ₹4,20,000/- along with interest @18% per annum towards arrears of rent and ₹3,000/- per day towards the damages / penalty from the date of legal notice till handing over the vacant / peaceful possession of the Suit Property by the Appellant.



8. After the service of summons, the Appellant entered appearance on 04.11.2024, however did not file any written statement to the Suit. After the first appearance, the Appellant stopped appearing and, accordingly, *vide* order dated 08.11.2024, the Appellant was proceeded *ex-parte*. The Respondents led *ex-parte* evidence, which was recorded before the learned Local Commissioner appointed *vide* order dated 07.01.2025.

9. The learned Commercial Court after examining the pleadings and evidence, came to conclusion that there is nothing on record to suggest that the Appellant had paid any rent to the Respondents for occupying the Suit Property. It was observed that the Appellant had failed to file written statement or lead any evidence and after entering appearance on 04.11.2024, the Appellant did not appear. Accordingly, the learned Commercial Court decreed the Suit *vide* Judgment dated 17.03.2025 in favour of the Respondents in terms of the prayers sought in the Suit.

10. On 29.04.2025, the Appellant filed an Application under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the Judgment and Decree dated 17.03.2025 (“**Application**”).

11. The Appellant contended that the appearance of the Appellant on 04.11.2024 was without taking any legal aid / consultancy. It was stated that the Appellant is 77 years old and was suffering from degenerative disease of Lumbar Spine with DDD multiple levels with Grade-I anterior listhesis L4 over L-5 with broad based bulging of L4-L5 disc with compromise neural foramina with L-5 Radiculopathy. Since December 2024, the health of the Appellant had deteriorated and the Doctor had advised to take bed rest at least for four months. Due to the illness and pain, the mind of the Appellant did not work properly as the regular treatment was going on from December,



2024 to March, 2025. Copy of all medical records were annexed along with the Application.

12. It was further stated by the Appellant in the Application that on 16.03.2025, the Appellant informed his son about filing of the Suit, who visited the Commercial Court on 17.03.2025 to inquire about the Suit and was informed by the Court staff that the Suit was listed on the very same day. Accordingly, son of the Appellant engaged a counsel who appeared in the Court at 04:30 PM, however, it was informed by the said counsel that the Suit had been decreed and the Judgment will be uploaded on the official website of the Court within 3-4 days. Accordingly, the son of the Appellant procured a copy of the Judgment and engaged a counsel on 16.04.2025 and handed over the entire medical documents.

13. The Application was dismissed *vide* Impugned order, which observes that having gone through the documents filed along with the Application, no sufficient cause has been established by the Appellant for not appearing before the Court prior to the passing of *ex-parte* Decree in the Suit. The documents filed along with the application were in the nature of cash receipts / donations in the name of Gupti Sagar Charitable Medical Centre, however, the address of the said medical centre had not been mentioned on the donation receipts. The prescription also did not bear the name of the doctor. Accordingly, the learned Commercial Court concluded that the documents did not disclose the nature of the medical problem faced by the Appellant which started from 25.10.2024 and continued during the trial of the Suit.

14. The Impugned Order also records that there was no justification provided for not filing the Application within 30 days from the date of



knowledge of the Judgement and Decree, which was obtained on 17.03.2025 itself. Accordingly, having considered the averments made in the Application and the documents filed along with the same, the learned Commercial Court did not find any reasonable cause for setting aside the *ex-parte* Decree. In view of the same, the Application was dismissed with a cost of ₹10,000/- to be paid by the Appellant to the Respondents.

15. From the perusal of the Judgment and Decree dated 17.03.2025 and Impugned Order, it is clear that the Appellant did not appear during the trial of the Suit and has not been able to make out sufficient cause for setting aside the *ex-parte* Decree. After the first appearance on 04.11.2024, the Appellant did not appear before the learned Commercial Court. The justification given by the Appellant for non-appearance during the trial of the Suit is not convincing as the Application mentions the disease, however there is no supporting document to conclusively prove that due to the said medical condition, the Appellant was prevented from appearing before the learned Commercial Court.

16. Therefore, the *ex-parte* Decree passed by the learned Commercial Court was justified as the Appellant failed to appear despite being aware of the pendency of the Suit. The Appellant was also aware about the passing of the Judgement and Decree on 17.03.2025 as admitted by the Appellant in the Application.

17. The learned Commercial Court has observed that the documents filed along with the Application did not contain the address of the Charitable Trust and even the name of the doctor was not mentioned on the prescription. A copy of the Application filed along with this Appeal does not contain any such documents filed along with it before the learned



Commercial Court. Accordingly, the findings recorded in the Impugned Order regarding the nature of the documents filed along with the Application cannot be controverted.

18. As the Appellant has deliberately failed to appear before the learned Commercial Court despite being aware about the pendency of the Suit and the reasons mentioned in the Application for non-appearance are not sufficient for setting aside the *ex-parte* Judgment and Decree dated 17.03.2025, the Impugned Order as well as the Judgment and Decree dated 17.02.2025 are upheld.

19. Even on merits, the Judgment and Decree dated 17.03.2025 records that the Appellant did not file the written statement to the Suit and there was no material on record to show that the Appellant had made any payment of the rent despite occupying the Suit Property as a tenant. Even in the present Appeal, the Appellant has not raised any ground for setting aside the *ex-parte* Judgment and Decree dated 17.03.2025 on merits. The *ex-parte* Judgment and Decree dated 17.03.2025 contains detailed analysis of the facts and evidence for granting relief in favour of the Respondents.

20. In view of the above, there is no infirmity with the Impugned Order as well as the *ex-parte* Judgment and Decree dated 17.03.2025 and no interference by this Court is required in the present Appeal.

21. Accordingly, the present Appeal is dismissed. There shall be no order as to costs.

DEVENDRA KUMAR UPADHYAYA, CJ

TEJAS KARIA, J

FEBRUARY 3, 2026/ 'A'

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