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

+ FAO 165/2019, CM APPLs 17677/2019, 30409/2019,
1067-68/2020, 9602-03/2024
SHASHI CHAND SHARMAAppellant
Through: Mr. Sandeep Thakur, Advocate.

versus

BHUPINDER SHOKEEN & ORSRespondents
Through: Counsel for respondents (presence not
given)

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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06.01.2026

1. The present appeal has been filed under order XLIII rule (1) (D) read with Section 104 C.P.C seeks setting aside of the order dated 16.03.2019 passed by the learned Trial court whereby the application filed by the appellant under Order IX Rule 13 CPC seeking setting aside the ex-parte decree which came to be dismissed on 20.01.2018.
2. Notably, the respondent/plaintiff had preferred the suit claiming therein that he purchased the suit property from one *Talvinder Singh* by way of registered sale deed dated 10.02.2012. It was further claimed that the appellant/defendant had unauthorizedly occupied the suit property, pursuant to which FIR no. 289/2007 under Sections 448/120 B IPC was registered on the complaint of said *Talvinder Singh*. The record further reveals that the previous owner had also filed a complaint in the Police Station against the appellant claiming that he had taken physical possession of the suit property



and proceedings under Section 145 Cr.P.C. were also initiated. In the said proceedings, both parties were subsequently directed to approach the concerned Civil Court for establishing their respective claim for title.

3. In the suit proceedings, the appellant was proceeded ex-parte and eventually an ex-parte judgement and decree was passed against him on 20.01.2018. The appellant preferred the subject application Order IX Rule 13 claiming that he was never served with summons in the suit and that he became aware of the passing of the same against him only in the second week of June, 2018, when the documents pertaining to the execution proceedings were received through speed post from the executing Court. It further claimed that the *Talvinder Singh* had no valid title to the suit property, as there was no exchange of flat between the appellants and one *Mr. Sanjay Pal*, through whom *Talvinder Singh* had claimed title. It was further claimed that the respondent had colluded with the process server and the postal authorities and had procured false and fabricated service reports. The said application was opposed by the respondent thereby denying the allegations of collusions and asserted that the appellant has deliberately avoided service of summons for a prolonged period of 4 years which is nothing but an abuse of the process of the Court.

4. Before proceeding further, it is apposite to note that considering the application under Order IX Rule 13 CPC, an ex-parte decree passed against the defendant can be set aside only if the Court is satisfied that either the summons were not duly served upon the defendant, or that he was prevented by any '*sufficient cause*' from appearing when the suit was called for hearing.

5. In the present case, the appellant has claimed that it was never served



with the summons. In the impugned order, the Trial Court noted that the present suit was initially instituted before High Court on 26.07.2012 and was subsequently transferred to the District Court on account of enhancement of pecuniary jurisdiction. The Trial Court further noted that the various attempts were made to serve the appellant over a period of 4 years. The relevant extract of the order is as under:

“17. The perusal of the record reveals that from 2012 to 2016 number of processes were sent to defendant which I will be elaborating in succeeding paragraphs and it is only on 30.03.2017, the defendant was served by way of publication.

18. The details/chronology of the various process sent to the defendant and its outcome are as follows:

i) Summons dated 28.08.2012 returned with the report that premises was found locked. Attempts were made on 14.09.2012 and on 01.10.2012. Summons sent by post received back with an endorsement that repeated visits were made but premises were found locked (6 attempts were made).

ii) Summons dated 05.04.2014 returned with the report that visit was made on 19.04.2014, 23.04.2014 and 24.04.2014 where a lady disclosing herself as servant told that defendant is not present. On the second visit premises was found locked and on the last visit a lady purported to be a servant did not open the door. Summons sent by post received back with an endorsement dated 24.04.2014 a young lady told no person lives here.

iii) Summons dated 09.05.2014 returned with the report that on 20.06.2014 a lady by the name of Isha purporting to be nephew of defendant refused to take the summons and said that without prior permission she will not take the summons and prior this visit on 20.06.2017, various visits were also made on 25.05.2014 and 09.06.2014 where premises was found locked.

iv) Summons dated 09.05.2014 sent by post also received back with the report that premises was found locked.

v) Summons dated 16.04.2015 returned by the postal authorities with the report that premises was found locked.

vi) Summon dated 26.09.2015 was attempted to be served on 08.10.2015 and 13.10.2015 but it came with the report that premises were found locked. Summons were also attempted to be served on 09.10.2015 where bother of defendant spoke to defendant over the phone but refused to take the summons. The report was witnessed by one Aman. The second attempt was made on 12.10.2015 where a lady purporting to be a relative of defendant did not take a summon. The report was witnessed by one. Amit On 14.10.2015, attempt was made to serve defendant but lady said that



defendant is not present and therefore refused to take the summon.

vii) Summons dated 18.11.2015 for appearance before the court on 11.03.2016 was also not taken by a lady named Sushma Sachdeva on 02.12.2015 and thereafter on 07.12.2015, the same lady met the process server but refused to take the summons. The summons sent by registered post also came back with an endorsement that premises was found locked and about 4 visits were made vide endorsement dated 27.01.2016.

viii) Summons dated 19.07.2016 for appearance on 02.09.2016 came back with the report that premises was found locked and even the summons sent by post also received with the report that receiver was found not available vide endorsement dated 28.07.2016.

ix) Summons dated 14.10.2016 received back with the report that a lady told that defendant is not available and is currently at Amritsar and thereafter a second visit was made on 22.10.2016 where the lady upon being told that there is a summon from the court closed the door where an endorsement of neighbour of defendant i.e. Sh Sandeep was taken on 22.10.2016 and the report was witnessed by one Aman.”

6. The aforesaid facts clearly indicate that in about 4 years, approximately 30-40 visits were made by process server as well as by the postal authorities to effect service upon the appellant. The reports of the process servers consistently records that regularly a lady would come out to interact but would refuse to accept the summons. The names of the lady persons who met at the address were *Isha, Sushma* and even the *Bhabhi* of the appellant. Significantly, the appellant has not stated in his application that the said ladies had no connection with him. Furthermore, on 09.10.2015, the brother of the appellant was found present at the premises and, after speaking with the appellant, refused to accept summons. The appellant's allegation that the process server and the postal authorities were acting in collusion with the respondent appears to be far-fetched and preposterous, particularly in view of the fact noted above, that for over a period of 4 years in which many different process servers or officials of postal authorities have visited appellant's premises. The appellant has also



never claimed as that he was not residing at the said address. On contrary, the appellant himself as claimed that he became aware of the present proceedings at the very same address to which the summons issued by the Court were repeatedly sent. Before proceeding ex-parte against the appellant, the Trial Court, upon an application under Order V Rule 20 CPC moved by the respondent directed substituted service. The publication and affixation were also carried out pursuant to the order dated 03.02.2017.

7. Needless to state, while considering an application under Order IX Rule 13 CPC, the Court is required to as to carefully look at the circumstances as to whether the Trial court had duly satisfied itself that the appellant/defendant was deliberately avoiding service.

8. The issuance of order directing substituted service was passed only after the Court recorded its satisfaction under Order V Rule 20 CPC (Ref: Neerja Realtors Vs. Janglu¹)

9. In view of the facts and circumstances of the case, this Court has no hesitation to record its concurrence with the impugned order. The appellant's attempt to avoid service for over a period of 4 years is gross and nothing but an abuse of the process of the Court.

10. Accordingly, finding no ground to interfere with the impugned order, the present appeal is dismissed.

11. Before parting, this Court also take note that, in pursuance of the orders passed by the predecessor Bench, the appellant has deposited certain sums with the Registrar General of this Court. The Registry shall transfer the said amount, if kept in the form of FDR, along with the interest accrued

¹ 2018 2 SCC 649



there upon, if any, be transferred to the executing Court.

MANOJ KUMAR OHRI, J

JANUARY 6, 2026

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