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

+ **FAO 120/2024, CM APPL. 20722/2024**

VASUDEV SHARMA

.....Appellant

Through: Mr. Chanderkant Tyagi, Advocate

versus

SH. SATPAL SHARMA & ORS.

.....Respondents

Through: Mr. Jatin Kalra, Mr. Kunal Bawa,

Advocates for Respondent No. 5

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

19.02.2026

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1. The present appeal has been filed against the order dated 02.03.2024 passed by the learned ADJ-04, North West, *Rohini Courts, Delhi*, in CS DJ No. 931/2017, whereby the application filed by the appellant/plaintiff under Order IX Rule 9 CPC was dismissed.

By way of the said application, the plaintiff had prayed for setting aside of the earlier order dated 15.12.2022 dismissing the suit in default for non-appearance; however, the Trial Court declined to restore the suit to its original position.

2. Briefly stated, the background facts are that the appellant/plaintiff had filed the underlying suit on 30.10.2017 praying for a decree of declaration, partition, appointment of receiver, possession, and mandatory injunction against the respondents/defendants in respect of the suit property in *Kanhaiya Nagar, Delhi*. Upon completion of pleadings, issues were framed on 24.04.2019 and the plaintiff was directed to lead evidence. The plaintiff's evidence affidavit was filed, whereafter proceedings were affected by the Covid-19 pandemic and adjourned on subsequent dates.

3. After the resumption of normal work, on 15.12.2022, the Trial Court



recorded in its order that no one was present on behalf of the plaintiff and that, after waiting till 11:20 a.m., the counsels for the defendants could not wait any longer on account of scheduled hearings in other Courts. The matter was thereafter proceeded with under Order XVII CPC and dismissed in default for non-appearance. The subject application under Order IX Rule 9 CPC filed against the said order was ultimately dismissed by the Trial Court *vide* the impugned order, holding that there was no sufficient ground to justify the non-appearance of the plaintiff.

4. Learned counsel for the appellant/plaintiff, while assailing the impugned order, submits that the suit was dismissed on the first call itself without granting the plaintiff or counsel any further opportunity to appear. It is submitted that the restoration application under Order IX Rule 9 was filed on the very same day as the order dismissing the underlying suit in default, which demonstrates the *bona fide* intention of the plaintiff to prosecute the suit. He further submits that the explanation furnished in the application clearly stated that the counsel was engaged in other Court proceedings and had attempted to join through video conferencing, while the plaintiff was himself unable to attend due to a medical difficulty, which is supported by an X-ray report dated 09.12.2022.

5. *Per contra*, learned counsel for the respondent contends that the matter is frivolous and was filed only to harass the defendants. He submits that neither the plaintiff nor any witness was present on the concerned date, and their appearance was awaited until 11:20 a.m., as recorded in the order. He further submits that the restoration application did not disclose any cogent reason for non-appearance and that the X-ray slip cannot be relied upon as an indicator of the plaintiff's incapacity to attend the court proceedings.



6. The primary issue arising for consideration is whether the plaintiff has shown “sufficient cause” for his non-appearance, so as to warrant restoration of the suit under Order IX Rule 9 CPC.

7. It is pertinent to note in this regard that the order dated 15.12.2022 reflects that on the first date of absence, without granting any further opportunity other than waiting till 11:20 a.m., the suit was dismissed in default under Order XVII CPC.

8. The said order does, however, reflect that the restoration application under Order IX Rule 9 CPC was filed on the very same day as the dismissal of the suit. The relevant portion from the order is reproduced hereunder:-

“File is taken up again at 03:00 pm on the appearance of Sh. Chanderkant Tyagi, Ld. Counsel for plaintiff.

An application is moved under Order 9 rule 9 CPC by Ld. Counsel for plaintiff for recalling the order passed in the morning and for restoration of the suit.

Let notice of the application be issued to defendants on filing of PF for 04.02.2023. PF be filed within a week from today.”

9. Along with the said restoration application, copies of the order sheets of other matters in which the plaintiff’s counsel appeared on 15.12.2022 have been placed on record. These order sheets confirm the counsel’s presence before other Courts on the same date.

10. The law on the subject is well settled, and a gainful reference may be made to the decision of the Supreme Court in G.P. Srivastava Vs. R.K. Raizada & Ors.¹, wherein it was held that:-

“7. ... The words ‘was prevented by any sufficient cause from appearing’ must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. ...”

¹ (2000) 3 SCC 54



Applying this principle to the present case, the order sheets evidencing the counsel's engagement elsewhere, alongside the filing of the restoration application on the very same day, clearly demonstrate that the non-appearance was neither deliberate nor *mala fide*.

11. In such circumstances, considering the dismissal of the suit at the first call, the filing of the restoration application on the same day, and the explanation regarding the counsel's engagement being duly supported by the order sheets, this Court is satisfied that "sufficient cause" is made out. This Court is of the considered view that to refuse the restoration of the suit under such circumstances would defeat the object underlying Order IX Rule 9 CPC.

12. Accordingly, there being no wilful or deliberate default on the part of the plaintiff, the present appeal is allowed. The impugned order dated 02.03.2024 as well as the dismissal order dated 15.12.2022 are hereby set aside. Consequently, the suit shall stand restored to its original position prior to the order dated 15.12.2022. The parties shall appear before the concerned Trial Court on 09.03.2026.

13. The already scheduled date before the Joint Registrar stands cancelled.

14. The present appeal, along with the pending application, is disposed of in the above terms.

15. The date already fixed before the Joint Registrar i.e., 24.04.2026 stands cancelled.

16. A copy of this judgment be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI, J

FEBRUARY 19, 2026/nb