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

+ **FAO 134/2023**

JAI NARAIN SHARMA

.....Appellant

Through: **Mr. Aditya Gaur & Mr. Krishan
Bhardwaj, Advocates.**

versus

AHSAN RAZA @ AISAN RAZA

.....Respondent

Through: **Mr. Shakeel Ahmad, Advocate
(through VC).**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

20.02.2026

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1. The present appeal has been filed against the order dated 28.01.2023 passed by the learned ADJ-07, South East District, *Saket* Courts, in Misc. No. 64/2022, whereby the application filed by the appellant/plaintiff for restoration of the underlying suit came to be dismissed. Notably, the suit, being CS No. 1112/2017, was dismissed on 04.04.2022 for non-prosecution.
2. Briefly stated, the appellant/plaintiff had filed the underlying suit for recovery of possession, *mesne* profits, damages, and permanent injunction against the respondent/defendant. On 04.04.2022, the matter was taken up for hearing and a proxy counsel appeared on behalf of the plaintiff. Upon an inquiry regarding the payment of costs of Rs.5,000/- imposed *vide* order dated 19.02.2020, it was stated that the main counsel had not been able to contact the plaintiff. The Trial Court, observing that the plaintiff was unwilling to lead evidence, dismissed the suit for non-prosecution as per Order XVII Rule 2 read with Order IX Rule 8 CPC; and, observing that the



costs had remained unpaid, dismissed the suit as per Section 35B CPC.

3. An application seeking restoration was moved, and the learned counsel for the plaintiff contended that the non-appearance of the plaintiff on 04.04.2022 was due to the plaintiff accompanying his daughter for an examination, while the main counsel could not appear as he was occupied with the wedding of his son. It was submitted that the proxy counsel, due to a lack of experience, was unable to communicate these facts to the Court on the said date. To demonstrate *bona fides* in paying the costs, a demand draft of Rs.5,000/- in favour of the defendant was placed on record.

4. The defendant opposed the application, contending that the plaintiff was merely delaying the disposal of the suit and that the remedy against the dismissal in question was to file an appeal rather than a restoration application.

5. The Trial Court dismissed the application *vide* the impugned order dated 28.01.2023. Notably, the Trial Court expressly clarified that had the suit been dismissed only for non-appearance, it would have allowed the restoration application as, in its view, “sufficient cause” for the same existed. However, the Trial Court declined to restore the suit on the ground that it could not re-visit the dismissal insofar as it related to Section 35B CPC for non-payment of costs, observing that the remedy for the same lay before a superior Court.

6. Before this Court, learned counsel for the appellant contends that once the Trial Court was satisfied that sufficient cause existed for the non-appearance of the plaintiff and the main counsel, the suit ought to have been restored in its entirety. He further submits that the dismissal of the underlying suit under Section 35B CPC also deserves to be set aside, as the



non-payment of the requisite costs was not a result of wilful default, but rather a consequence of the outbreak of the COVID-19 pandemic. It is further contended that the subject application ought to have been allowed as the plaintiff had demonstrated *bona fides* by preparing and placing on record a demand draft of Rs.5,000/- in favour of the defendant.

7. *Per contra*, learned counsel for the respondent supports the impugned order and submits that the appellant has failed to show any cogent reason to interfere with the findings of the Trial Court.

8. A gainful reference may be made to the decision of the Supreme Court in Manohar Singh Vs. D.S. Sharma¹, wherein it was held as under:-

“11. A conspectus of the above provisions clearly demonstrates that under the scheme of CPC, a suit cannot be dismissed for non-payment of costs. Non-payment of costs results in forfeiture of the right to further prosecute the suit or defence as the case may be. Award of costs, is an alternative available to the court, instead of dispensing with the cross-examination and closing the evidence of the witness. If the costs levied for seeking an adjournment to cross-examine a witness are not paid, the appropriate course is to close the cross-examination of the witness and prohibit the further prosecution of the suit or the defence, as the case may be by the defaulting party.”

9. In view of the settled position of law as above, this Court finds that the Trial Court committed a jurisdictional error in holding that it could not revisit the dismissal insofar as it related to Section 35B CPC. As per the mandate in Manohar Singh (*supra*), Section 35B does not contemplate the dismissal of a suit as a consequence of non-payment of costs; rather, it only permits the forfeiture of the right to further prosecute the matter.

10. It follows that once the Trial Court recorded a finding that “sufficient cause” existed for the non-appearance of the plaintiff and his counsel on

¹ (2010) 1 SCC 53



04.04.2022, the suit ought to have been restored under Order IX Rule 9 CPC.

11. Accordingly, the present appeal is allowed. The impugned order dated 28.01.2023 and the dismissal order dated 04.04.2022 are hereby set aside. The suit is restored to be proceeded with from the stage it was at on 04.04.2022.

12. In the interest of justice and bearing in mind the oral prayer made for reduction of costs, the above restoration is subject to the appellant/plaintiff depositing Rs.1,000/- costs in favour of the Delhi State Legal Services Authority (DSLISA).

13. The present appeal is disposed of in the above terms.

14. A copy of this judgment be communicated to the concerned Trial Court and the suit be listed for directions at the first instance on 19.03.2026.

MANOJ KUMAR OHRI, J

FEBRUARY 20, 2026

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