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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 217/2021

SHRI BHAJAN LAL & ANR.

.....Appellants

Through: Mr.Alok Kr. Aggarwal, Ms.Anushruti
and Ms.Mahima, Advocates

versus

SMT. JASWINDER KAUR & ORS.

.....Respondents

Through: Mr.Amit Prasad, Mr.Ayodhya Prasad,
Mr.Saravjeet Singh and Ms.Neharika K.,
Advocates for respondent Nos.1 and 2
Mr.Nikhil Khandelwal, Advocate for respondent
Nos.3 to 5

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

12.05.2026

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1. The present appeal has been filed under Order XLIII Rule 1(C) of the Code of Civil Procedure, 1908(hereinafter 'CPC') by the appellants, being the plaintiffs before the Trial Court, assailing the final order dated 29.06.2021 passed by learned ADJ-07, Central, *Tis Hazari* Courts, Delhi in M. No. 25/2021, whereby the application filed by plaintiffs under Order IX Rule 9 CPC came to be dismissed.

2. Briefly stated, the facts of the present case are that the plaintiffs had entered into an Agreement to Sell dated 04.08.2008 with the respondents/defendants in respect of the suit property bearing no. 111288, Ward No. 14 *Khasra* No. 93/27, at *Bagh Raoji, Doriwalan, Lajwanti* Villa, New *Rohtak* Road, *Karol* Bagh, New Delhi-110005, for a total sale consideration mutually agreed between the parties, pursuant to which a sum



of Rs. 52,50,000/- was paid by the plaintiffs. Disputes subsequently arose between the parties regarding performance of the said agreement, compelling the plaintiffs to institute the civil suit. During the pendency of the proceedings, the suit came to be dismissed in default for non-prosecution vide order dated 30.01.2019. Thereafter, the application filed by the plaintiffs under Order IX Rule 9 CPC seeking restoration of the suit came to be dismissed vide the impugned order dated 29.06.2021.

3. Learned counsel for the plaintiffs submits that the Trial Court erred in dismissing the application seeking restoration of the suit, as the absence of the plaintiffs was neither deliberate nor intentional. It is submitted that the plaintiffs have been pursuing the matter *bona fide* and that dismissal of the suit has caused serious prejudice to them. It is further submitted that the matter ought to be decided on merits instead of being dismissed on technical grounds.

4. *Per contra*, learned counsel for the defendants submits that the plaintiffs were negligent in pursuing the matter and had failed to appear before the Trial Court. It is submitted that the impugned order does not suffer from any illegality or infirmity. He further submits that no sufficient cause has been shown for restoration of the suit.

5. I have heard the learned counsel for the parties and perused the records.

6. Notably, upon institution, the present suit was listed before the Trial Court from time to time and was being diligently pursued on behalf of the plaintiffs. The record reflects that the matter was last effectively taken up on 26.11.2018, when a proxy counsel appeared on behalf of the plaintiffs and the matter was adjourned for 30.01.2019 for arguments on the pending



applications. It is the case of the plaintiffs that, due to an inadvertent mistake on the part of the proxy counsel who had appeared on 26.11.2018, the next date of hearing was incorrectly noted as 30.04.2019 instead of 30.01.2019. Further, the said incorrect date was also not updated in the office diary maintained by the counsel's office. Consequently, when the matter was taken up by the Trial Court on 30.01.2019, none appeared on behalf of the plaintiffs, leading to dismissal of the suit in default for non-prosecution.

7. It has been further explained that during the relevant period, the office of the conducting counsel was in the process of shifting from *Jangpura* Extension, New Delhi to Sector-47, *Noida, Uttar Pradesh*, on account of which several case files were being reorganized and reallocated. It is stated that, during such transition, the file pertaining to the present matter was inadvertently tagged along with disposed of matters and could not be traced by the office staff and clerks.

8. It is further noted that the plaintiffs approached the counsel's office in or around November, 2019 to ascertain the status of the case, whereafter efforts were made by the associates and clerks to trace the file. Upon tracing of the file in January, 2020 and examination of the previous orders, it came to light that the suit had already been dismissed for non-prosecution *vide* order dated 30.01.2019. Upon further inquiry and verification from the court diary and office records, it was discovered that the proxy counsel had inadvertently recorded the wrong next date as 30.04.2019 and had omitted to update the correct date in the office diary. It was also found that when the matter was not reflected in the cause list on 30.04.2019, the concerned associates failed to verify the status of the matter either from the court record or from the Reader concerned. Thereafter, the normal functioning of



courts and the counsel's office was disrupted on account of the Covid-19 pandemic, which further contributed to the delay in filing the restoration application.

9. This Court in Lalit Kumar Bhargava v. Devender Kumar Bhargava,¹ observed that although a litigant is expected to remain diligent in pursuing his case and cannot entirely shift the blame upon the counsel, at the same time, a litigant should not be made to suffer for inadvertent lapses or negligence on the part of the counsel. In the present case, the record reflects that the plaintiffs had been pursuing the matter and the default occurred due to incorrect noting of the date and lapses in the counsel's office. There is nothing on record to show that the plaintiffs themselves had deliberately abandoned the proceedings.

10. In the context of applications seeking condonation of delay and restoration of proceedings, the settled position of law consistently emphasizes that courts ought to adopt a liberal and justice-oriented approach while examining whether sufficient cause has been made out. In this regard, reference may be made to Thirunagalingam v. Lingeswaran & Anr.² by the Supreme Court wherein it has been held as under:-

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.”

11. Similarly, this Court in Shirley Nita Singh v. Sanjay Lal & Ors.³, has

¹ 83 (2000) DLT 567

² 2025 SCC OnLine SC 1093

³ FAO 37/2011



held that while considering condonation of delay, the Court should adopt a liberal approach so that a party is not denied an opportunity to have the matter decided on merits. The Court further observed that an overly technical or strict approach should be avoided.

12. The record further reflects that when the defendants, after having been proceeded *ex-parte*, moved an application seeking setting aside the said order, the plaintiffs had given their no objection thereto.

13. A gainful reference may also be made to the decision of the Coordinate Bench of this Court in Sukhinder Singh & Ors. v. Gurbux Singh & Ors.⁴, wherein it was held as under:-

“32. Order 9 Rule 9 of the Code, reads as under:

'R. 9. Decree against plaintiff by defaults bars fresh suit--(1) Where a suit is wholly or partly dismissed under 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non- appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.'

33. The order of dismissal may be set aside if sufficient cause for nonappearance is shown to the satisfaction of the Court. The words 'sufficient cause' have got to be construed with regard to facts and circumstances of each case.

34. Supreme Court in *Collector, Land Acquisition Anantnag v. Mst. Katiji*, (1987) 2 SCC 107 : AIR 1987 SC 1353, while interpreting the meaning of the words 'sufficient cause' held:

'The expression 'sufficient cause' employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court'”

⁴ 2009 SCC OnLine Del 2588



14. From the aforesaid decisions, it is clear that while considering an application for condonation of delay and restoration of proceedings, the Court should adopt a liberal and justice-oriented approach. In the present case, the default appears to be an isolated lapse and not an intentional abandonment of the proceedings.

15. In view of the explanation furnished by the plaintiffs and the settled position of law, this Court is satisfied that sufficient cause has been made out.

16. Learned counsel for the plaintiffs submits that the plaintiffs are willing to pay costs of Rs.50,000/- to the defendants.

17. Accordingly, subject to payment of costs of Rs.50,000/- to the defendants, the suit shall stand restored to its original number and position and be listed before the concerned Trial Court initially for directions, on 22.05.2026.

18. In view of above, the present appeal is disposed of alongwith the pending application.

19. A copy of this order be communicated by the Registry to the concerned Trial Court.

MANOJ KUMAR OHRI, J

MAY 12, 2026

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