



2026:DHC:436



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

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Date of Decision: 13.01.2026

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FAO 226/2023 and CM APPL. 48221/2024

PRAMOD KUMAR GUPTA

.....Appellant

Through: Mr. V.K. Sharma, Advocate

versus

DEMCO INDUSTRIES INDIA AND ANR

.....Respondents

Through: Mr. Praveen Agrawal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been preferred under Order XLIII read with Sections 104 and 151 Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the order dated 11.05.2023 passed by ADJ-02, Shahdara, Karkardooma Courts, Delhi in Misc. DJ No.31/2017.
2. Vide the aforesaid order, the Trial Court while allowing the respondent's application under Order XXXVII Rule 4 r/w Section 151 CPC consequently setting aside the *ex parte* judgement and decree dated 02.02.2017. Notably, the appellant had preferred the underlying summary suit under Order XXXVII seeking recovery of sum of Rs.75,64,303/-. Upon summons being issued, the respondents/defendants (sole proprietor concern) were duly served affixation on 09.09.2016. Despite such service, the respondents failed to enter appearance and did not file any application seeking leave to defend, and were, accordingly, proceeded *ex parte* resulting



in the *ex parte* judgment and decree dated 02.02.2017.

3. It is contended by the learned counsel for the appellant that vide the impugned order while allowing an application of the respondents under Order XXXVII Rule 4 CPC, the Trial Court not only set aside the *ex parte* decree, but permitting the respondents to file the written statement in the matter, without directing them to first seek leave to defend in accordance with law.

4. Learned counsel further submits that the appellant is assailing only the latter part of the impugned order and that the appellant is not aggrieved by setting aside of the *ex parte* decree. He submits that the Trial Court ought to have directed the respondents to file leave to defend under the provisions of Order XXXVII CPC and erred in permitting them to file the written statement directly in the matter.

5. The contentions are opposed by the learned counsel for the respondents, who submitted that the respondents, being the defendants, had also prayed for dismissal of the suit on the ground of non-maintainability and the impugned order was passed considering the merits of the case.

6. The procedure governing summary suits is contained in Order XXXVII CPC. Rule 1 provides for Courts and classes of suits to which the Order is to apply. Whereas Rule 2(1) provides for the institution of summary suits, while Rule 2(2) mandates that the summons of the suit shall be in Form No.4 in Appendix B, or in such other Form as may, from time to time, be prescribed. Rule 3(5) stipulates that the defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise, disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and



whereupon leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just. It is further noted that Rule 3(6) provides that if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith. Rule 4 empowers the Court, that after decree the Court may, under special circumstances, set aside the decree and if necessary, to stay or set aside execution and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

7. A cumulative perusal of the aforesaid provisions would show that the Order XXXVII CPC provides for summary procedure applicable to in Courts and classes of suits specified therein. The provision mandates that a defendant, upon service of summons, should have necessarily filed leave to defend within the prescribed time period permitted. In the present case, despite being served, the respondents failed to enter appearance or seek leave to defend resulting in the decree being passed against them, which was subsequently set aside on an application under Order XXXVII Rule 4 moved on their behalf.

8. In the considered opinion of this Court, the Trial Court could not have permitted the respondents to file their written statement directly, thereby



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bypassing the procedure laid down under Rule 3 of Order XXXVII CPC and the consequence of setting aside of the decree stipulated in Rule 4 thereof. It would be an illogical outcome if the respondents merely file an application under Order XXXVII Rule 4 CPC, but does not seek leave to defend the suit. In other words, a summary suit cannot be converted to an ordinary suit merely upon setting aside an *ex parte* decree under Order XXXVII Rule 4 CPC. Consequently, the impugned order being completely flawed is set aside to the extent that it permitted the respondents to file their written statement. The respondents are, however, at liberty to file an appropriate application seeking leave to defend, which shall be considered by the concerned Court on its own merit without being influenced in any manner by the present order and in accordance with law.

9. The appeal is allowed and pending application are disposed of in the aforesaid terms.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 13, 2026/pmc

Signature Not Verified

Digitally Signed
By: NIJAMUDDIN ANSARI
Signing Date: 17/01/2026
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