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

+ **FAO 232/2025 & CM APPL. 52399/2025**

NARESH NARULA DECEASED THR LRSAppellant

Through: Mr. Umang Tyagi, Mr. Tanishq
Khurana, Mr. Siddharth Sharma, Mr.
Zuber Ali and Ms. Khushi Anand,
Advocates.

versus

VINOD SEIGELL DECEASED THR LRSRespondent

Through: Mr. Saksham Chawla, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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09.04.2026

1. Being aggrieved by the dismissal of his application filed under Order IX Rule 13 CPC by way of the impugned order dated 31.05.2025 passed by the learned DJ-01 (West), *Tis Hazari* Courts, in Misc DJ 187/23, the appellant has approached this Court assailing the same.

2. Briefly stated, the since deceased respondent/plaintiff (hereinafter the "plaintiff") had filed a suit seeking recovery of possession of property bearing no. C-85, Road No. 40, 1st floor, Shivaji Park, Punjabi Bagh West, New Delhi-110026, along with arrears of rent at the rate of Rs.85,000/- per month from 01.08.2019 till 14.11.2020 and damages/occupation charges from 01.12.2020 until delivery of vacant and peaceful possession of the said premises. It was claimed that the deceased appellant/defendant (hereinafter the "defendant") had



paid rent only till July 2019 and thereafter had remained in default.

3. *Vide* the *ex-parte* judgment dated 17.01.2022, the Trial Court noted that summons in the suit could not be served upon the defendant through ordinary mode as the premises were found locked. *Vide* earlier order dated 31.08.2021, the defendants were directed to be served by way of affixation. On the next date of hearing, the Trial Court, noting the absence of the defendants, listed the matter for recording the statement of the process server on 26.10.2021, on which date the defendants were directed to be proceeded *ex-parte*.

4. Learned counsel for the defendant contends that summons were never served on the defendant and that the defendant, being a tenant at the address concerned, had vacated the said premises, and as such service by way of affixation could not be held to be a valid service. In this regard, learned counsel further referred to the statement of the process server, wherein it is stated that he visited the tenanted premises on two occasions and the premises were found locked. No attempt was made by the process server to record the statement of any neighbour. Lastly, it is submitted that the defendant gained knowledge of the *ex-parte* decree only when he received summons of the execution proceedings.

5. Learned counsel for the plaintiff, on the other hand, seeks dismissal of the present appeal and contends that not only was service effected in terms of Order V Rule 20 CPC by affixation at the last known address of the defendant, but also by the sending of a WhatsApp message by the process server. It is next contended that despite the application under Order IX Rule 13 CPC by the defendant being filed belatedly, the same was not accompanied by any



application seeking condonation of delay.

6. A perusal of the proceedings would show that on the filing of the suit, the summons came to be issued to the defendant through speed post and RC, *vide* order dated 24.11.2020. On the next date, as per the report, the summons could not be served as the defendant had repeatedly left the premises. Again, on 02.02.2021, fresh summons were issued, which also could not be served as the door was found locked. On the next date of hearing, i.e., 07.04.2021, learned counsel for the plaintiff prayed for service through affixation as well as publication. The Court, however, directed that the summons be served through affixation only. A perusal of the statement of the process server would show that he stated to have visited the premises on two occasions, and on each date, he found the same to be locked. He thereafter affixed the summons on the main door of the premises. He further stated that though he tried to call the defendant, the defendant did not pick up the phone and summons were sent on his WhatsApp number. The process server does not state if he made any enquiry from any neighbour. Further, nothing has been stated as to whether any “double tick” was received on the summons sent through WhatsApp.

7. A reading of the impugned order would further show that the Court considered the plaintiff’s contention that the said application under Order IX Rule 13 CPC was not supported by any application seeking condonation of delay; however, the impugned order was passed on the merits of the case.

8. It is apt to note that Courts have repeatedly observed that a suit should not be shut out on mere technicalities but instead be decided on the merits of the contentions. The Supreme Court, in Dwarika Prasad (D), thr. LRs Vs.



Prithvi Raj Singh¹, referred to its earlier decision in Bhagmal Vs. Kunwar Lal², wherein the following was stated: -

“12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5”.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice.”

The Supreme Court went on to hold that there was no need to file a separate application for condonation of delay. The Court further found fault with the reasoning of the High Court insomuch as it had taken a hyper-technical view by dismissing the Order IX Rule 13 application on the ground that it was not accompanied by an application seeking condonation of delay.

9. In view of the above discussion, the plaintiff's contention is found to be

¹ 2024 SCC OnLine SC 3828

² (2010) 12 SCC 159



meritless. Accordingly, the impugned order is set aside and the present appeal is allowed. Let the suit be restored to its original number and be listed on 27.04.2026 before the Trial Court concerned.

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

MANOJ KUMAR OHRI, J

APRIL 9, 2026/sn