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

+ **FAO 350/2025, CM APPL.8138/2026**

SUMAN JAIN & ORS.

.....Appellants

Through: Ms. Shobha Gupta, Ms. Akshita, Ms. Simranjeet Kaur, Ms. Manasvi and Ms. Sonika, Advocates.

versus

ADESH NARAIN & ANR

.....Respondents

Through: Ms. Muskan Tyagi, Advocate for respondent no.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.05.2026

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1. The present appeal, filed under Order XLIII Rule 1(R) of CPC, is directed against the order dated 28.10.2025, whereby the application filed by the plaintiffs/appellants under Order IX Rule 9 CPC for seeking setting aside of the order dated 25.08.2023 was dismissed. The said order came to be passed in the context of a suit filed by the plaintiffs for recovery of damages for Rs.25 lakhs as well as grant of mandatory injunction.

2. The plaintiffs claimed that they were the co-owners of the ground floor of property bearing no.H-42, Green Park Extension, Safdarjung Enclave, New Delhi, (hereinafter referred to as the 'suit property'). It was further claimed that the defendants/respondents, who were occupying the first floor of the suit property, deliberately did not take any action of the flooding and seepage because of which the plaintiffs' portion of the suit property is damaged.



3. On 25.08.2023, the Trial Court noted that the plaintiffs had remained unrepresented on that date as well as on the previous date and also did not deposit costs of Rs.3,000/- imposed earlier. It was further noted that the plaintiffs had not supplied the documents as directed on 02.05.2023 and 24.04.2023. Noting this, the suit was dismissed for default and non-prosecution.
4. The impugned order came to be passed in the context of an application filed under Order IX Rule 9 CPC. The Court again noted that the cost of Rs.5,000/- imposed was not deposited and that, despite repeated opportunities, arguments were not addressed. In these circumstances, the application was dismissed.
5. It is argued on behalf of the plaintiffs that the Trial Court failed to appreciate the merits of the application as to whether the plaintiffs had shown sufficient cause under Order IX Rule 9 CPC for restoration of the suit.
6. Learned counsel for the defendants, on the other hand, vehemently opposed the appeal by contending that the plaintiffs, despite several opportunities, failed to either pay the costs or address their submissions.
7. Learned counsel for the plaintiffs submits that one last opportunity be granted to address the submissions on merits of the application. He further submits that though the cost has been deposited, however, undertakes that if the same is not deposited, the same would be deposited in terms of the directions of the Trial Court.
8. Considering that the impugned order has not been passed on the merits of the application, but on the aforesaid counts of costs not being paid and arguments not addressed, this Court, in view of the undertaking given



by the learned counsel for the plaintiffs, deems it fit to grant one final opportunity to the plaintiffs, subject to payment of further costs of Rs.5,000/- to be paid to the defendants, the application under Order IX Rule 9 CPC is restored for consideration on merits and, for which purpose, the application shall be listed before the concerned Trial Court on 28.05.2026.

9. It is clarified that this Court has not expressed any opinion on the merits of the case and the application be considered on its own merit.

10. The appeal is disposed of in the aforesaid terms.

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

MANOJ KUMAR OHRI, J

MAY 18, 2026/pmc