



2026:DHC:1062



\$~3

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: 2nd February, 2026

+

**RFA 84/2026, CM APPL. 5355/2026 (stay), CM APPL.5358/2026
(delay in refiling)****KAMLESH PRASAD**

S/o sh. Telhoo Ram

.....Appellant

Through: Mr. Pankaj Kumar Sharma, Advocate.

versus

SAHADEO RAM

S/o sh. Biletan Ram

.....Respondent

Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CM APPL. 5356/2026 (Exemption), CM APPL. 5357/2025 (Exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The Applications stand disposed of.

RFA 84/2026:

3. Regular First Appeal under Section 96(2) of the Code of Civil Procedure, 1973 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellant, to challenge the *ex parte Judgment and Decree dated 28.08.2024* and also the *Order dated 22.09.2025* of the learned District Judge-01, New Delhi whereby the *Application under Order IX Rule 13 CPC* seeking set-aside of the *ex parte decree, has been dismissed*.



2026:DHC:1062



4. The learned counsel for the Appellant submits that the possession in execution of the *ex-parte* Judgment, has already been taken on **21.02.2025**.

Suit No. CS DJ 431-23 for Possession, Recovery of Mesne Profit, Mandatory and Permanent Injunction:

5. The **brief facts** of the case are that a *Suit for Possession, Recovery of Mesne Profit, Mandatory and Permanent Injunction* in respect of the Suit Property bearing No. C-158, Ekta Vihar, Jaitpur Extension, Jaitpur, New Delhi-110044, had been filed by the Plaintiff/Respondent, Sahadeo Ram. The Plaintiff claimed that he had purchased the Suit Property from the erstwhile owner, on the basis of registered GPA and SPA, Agreement to Sell, Affidavit, Receipt, Will and Possession Letter all dated 01.08.2000. The Defendant/Appellant, Mr. Kamlesh Prasad was his nephew, who approached the Plaintiff for residential help. The Plaintiff allowed him to reside in the Suit Property purely on a license basis, without any consideration in October, 2020 (sic-2000).

6. On 17.10.2013, the Defendant had given an Undertaking to vacate the Suit Property as and when demanded by the Plaintiff. In 2019, the Plaintiff requested the Appellant/Defendant to vacate and hand over the possession of the Suit Property. However, he requested for some more time to vacate the Suit Property. The Plaintiff again approached the Defendant for vacating the Suit Property in January, 2022 but he failed to do so.

7. The Legal Notice dated 20.02.2023 for termination of the License was served upon the Defendant/Appellant. Since neither any Reply was received nor were the terms complied, the Plaintiff filed the Suit for Recovery of



2026:DHC:1062



Possession, Mesne Profits @ Rs.20,000/- p.a. w.e.f. 01.06.2020 to 31.05.2023 and a Decree of Mandatory Injunction for directing the Defendant, to remove all his belongings from the licensed premises and not to block ingress and egress of the Plaintiff and his family members. A Decree of Permanent Injunction was also sought against the Appellant/Defendant, to restrain him and his family from creating third party rights in the Suit Property.

8. The *Defendant/Appellant was served with the Summons by way of affixation, on 18.08.2023*. The Statement of the process server was recorded on 04.12.2023. Since none appeared on behalf of the Defendant despite service, he was proceeded *ex parte* on 04.12.2023. Thereafter, the Plaintiff examined himself as PW-1 and proved all the requisite documents.

9. The learned District Judge on the basis of the evidence and documents, decreed the Suit and directed the Appellant to hand over the vacant and peaceful possession of the Suit Property within 30 days and also restrained him from creating any third party rights in the Suit Property.

Misc DJ No. 263/25: Application under Order IX Rule 13 CPC:

10. The Defendant/Appellant thereafter, filed an Application under Order IX Rule 13 CPC, for setting-aside of the *ex-parte* decree. ***However, the learned District Judge vide Order dated 22.09.2025, dismissed the Application.***

11. *The present Appeal* has been preferred both against the *ex-parte* decree dated 28.08.2024 as well as the Order dated 22.09.2025 *vide* which the Application under Order IX Rule 13 CPC, was dismissed.

12. The *Appellant in the present Appeal*, has explained that the



2026:DHC:1062



Respondent is his Uncle and the Property dispute extended over decades of financial, familial and documentary transactions. The Appellant has claimed that he negotiated for the Suit Property from Harbhans Lal and took a loan of Rs.20,000/- from the Respondent, who was then a Deputy Secretary in the Government of India. The formalities were completed on 01.08.2000 when a Registered General Power of Attorney and other supporting documents, were executed. At the insistence of the Respondent, *the General Power of Attorney* was executed in the name of the Plaintiff, considering the alleged insistence to be benign, given his official position.

13. The Plaintiff has claimed that he has been continuously residing in the Suit Property, which is evidenced by Municipal records, utility bills and other documents. The Appellant has refuted the allegations of being a licensee or tenant in the suit property.

14. The Appellant claimed that *he repaid the loan to the Respondent* and persistently pressed for title rectification, only to be met with repeated delays, false assurances and ultimately evasive conduct from the Respondent. At one instance, the Respondent coordinated with the BSES Manager for electricity paperwork, but he withdrew his co-operation and some discrepancies in his signatures were raised, which created a doubt about his intention and *bona fides*.

15. The Appellant claimed that the Respondent, in an attempt to defeat the Appellant's continuous, exclusive, and open possession in the suit property, alleged that the possession was *merely permissive and by licence*, with no proprietary rights accruing to the Appellant. This allegation was made despite the Appellant's long-standing occupation of the property,



2026:DHC:1062



which is supported by extensive documentary evidence, including his School Certificates, identity documents (ID cards, Aadhar), utility bills and other records. Each of these documents bears the Appellant's credentials as a resident and reflects his uninterrupted possession since the purchase.

16. The Appellant claims that the Plaintiff/Respondent had placed reliance on record, which is Vada/Sahmati Patra dated 17.10.2013 wherein it was stated that the Respondent had permitted the Appellant to have temporary residence in the Suit Premises, solely on the ground of financial distress and medical necessity, with a stated undertaking that the Appellant would vacate upon demand. The document, was claimed by the Respondent to bear the signatures of the Appellant. The Plaintiff, on the basis of this document, had asserted that the possession was merely permissive with no other right. The Appellant denies his signatures on the said document and claims it to be a forged document, produced to misrepresent the nature of possession.

17. The Respondent further asserted that purported service of Legal Notice was made upon him on 20.02.2023, at both the addresses known to be of the Appellant. However, he does not mention the Appellant's true residential address, apparently with an intention to manipulate the service and to facilitate the *ex parte* decree. The Legal Notice contained assertions that the Appellant was a tenant and was forcefully remaining in the Suit Premises without rights, but its service not only remains disputed and unacknowledged by the Appellant, but there is also no definitive proof of the same.

18. The overarching context and timing of these actions, demonstrate that



2026:DHC:1062



the Respondent's allegations and the challenged Notice was intended solely to rebut the Appellant's claim of *adverse possession*. Under *Section 27 and Article 65 of the Schedule (First Division) to the Limitation Act, 1963*, the Appellant's occupation being open, exclusive, and hostile for well beyond the statutory period, it satisfies all conditions required for the perfection and vesting of ownership through adverse possession, thereby extinguishing the Respondent's right to recover the property. The Respondent's contentions regarding Licence or tenancy are not only baseless, but are tactically engineered to undermine the Appellant's legally protected rights and to mislead the Court.

19. The Order dated 18.08.2023, vide which the Appellant was proceeded *ex parte*, is challenged on the ground that the significant procedural lapses have tainted the purported service of summons dated 18.08.2023. The summons was delivered at the address where the Appellant does not reside; only his wife, who has a documented history of chronic psychiatric illness and is under continuous medical treatment, resided there with their son, who, due to private employment, was generally absent. The Medical Records and the OPD slips from Safdarjung Hospital (VMMC), Delhi incontrovertibly evidence the wife's chronic psychiatric illness.

20. Despite the Respondent's knowledge of the Appellant's correct address, no effort was made to serve him at the address where he actually lived. The Process Server did not secure the attestation from the neighbours or provide any photographic, video, or electronic evidence of affixation. No attempt was made to serve *via* registered post, courier, email, or WhatsApp, as has been established under the prevailing practice of this Court. This



2026:DHC:1062



omission deprived the Appellant of Notice of the proceedings, in violation of principles of natural justice, despite ongoing contact between the parties through WhatsApp chats as late as 21.12.2023.

21. Medical records from Safdarjung Hospital and VMMC, Delhi, confirm that the Appellant's wife was medically incapable of understanding or relaying any court communication. The Appellant and his family were totally unaware of the litigation till the bailiffs arrived for execution on 11.02.2025.

22. It is claimed that the Appellant was completely unaware of the pending litigation. He participated in the Panchayat Meeting on 19.11.2023 and convened with the community witnesses for amicable settlement. The Respondent agreed to transfer 50 square yards out of 100 square yards to the Appellant in exchange of Rs.1,71,000/- paid through Bank transaction and documented by cheque, passbook entry and deposit slips. Despite receiving full consideration, the Respondent failed to formalize the Panchayat Agreement or effectuate title transfer, further demonstrating his *mala fide* intent.

23. The Respondent's *Civil Suit* was reserved for Judgment on 06.08.2024 and was ***decreed ex parte on 28.08.2024.***

24. During the execution proceedings in ***Execution Case No. 3249/2024***, the learned District Judge on 15.02.2025, directed that videography/photography of the eviction and affixation process be conducted and placed on the judicial record, before the next date i.e., 05.04.2025. During the subsequent proceedings in the Execution Petition, the record reveals that contrary to the express direction, no



2026:DHC:1062



videography/photography of the eviction or affixation, was ever filed or conducted, establishing material breach of the Court's direction.

25. The Appellant challenged the *ex parte* decree dated **28.08.2024** under Order IX Rule 13 CPC read with Section 5 Limitation Act, on the **ground** of lack of proper service and medical incapacity.

26. The Application under Order IX Rule 13 CPC filed by the Appellant, was dismissed on 22.09.2025, by observing that the claim of the Appellant that the service was improper, delayed or there was medical incapacity of the wife, who had received the summons, was untenable and the service was held to be legally sufficient and proper. The possession has already been delivered in the execution.

27. The *grounds of challenge of the Appeal*, are that there was no proper service of the summons in terms of the Order V Rule 15 CPC. There was no videography/photography of the affixation of the summons or of the eviction proceedings done, which was in violation of the directions of the learned District Judge. Despite being a close relative and in continuous communication through WhatsApp on 21.12.2023, the pendency of the Suit was never disclosed by the Respondent to the Appellant, reflecting his *mala fide* intent and suppression of material facts. Reliance is placed on Gauhati University vs. Niharlal Bhattacharjee, (1995) 6 SCC 731.

28. Reliance is placed on Parimal vs. Veena @ Bharti, (2011) 3 SCC 545 wherein it was held that a liberal interpretation of "*sufficient cause*" must be done while considering the condonation of delay Application. The Appellant claimed that he was genuinely unaware of the litigation and became aware about it only when the Bailiff arrived on 11.02.2025, for execution.



2026:DHC:1062



29. The delay in filing the Application for setting-aside the *ex-parte* decree, was not wilful but occasioned by absence of actual notice, family medical incapacity and procedural lapses. Reliance has placed on G.P. Srivastava vs. Shri R.K Raizada & Ors., (2000) 3 SCC 54 wherein it is held that genuine *bona fide* non-appearance or delay, must be liberally construed in favour of the substantive justice. The Respondent's allegations of forceful possession and tenancy, are completely contradictory to the Appellant's documents, who has been in continuous peaceful possession.

30. Hence, a prayer is made that the impugned *ex-parte* Judgment and decree dated 28.08.2024 and the Order dated 19.09.2025 of the Execution Court recording the satisfaction of the decree, be declared null and void.

31. It is further submitted that 151 days' delay in filing the Application under Order 9 Rule 13 CPC, be condoned.

Submissions heard and record perused.

32. The Plaintiff/Respondent had filed a *Suit for Possession, Mesne Profits, Mandatory and Permanent Injunction in respect of the Suit property against the Appellant*. Undeniably, the Appellant is the nephew of the Plaintiff. The case of the Appellant himself as narrated in the Appeal, is that he was instrumental in negotiating the deal in respect of purchase of property for which he had taken a loan of Rs.20,000/- from the Respondent, who was then Deputy Secretary in Government of India. The full purchase formalities were completed on 01.08.2000 including the registered GPA and other supporting documents. He himself has admitted that the GPA was in the name of the Respondent. The case of the Respondent was also that he was the owner of the property having purchased it in August, 2000 on the



2026:DHC:1062



basis of registered GPA and supporting documents.

33. The Appellant has tried to justify that it was he who had purchased the property, but he himself admits that loan of Rs.20,000/- was taken by the Respondent. Moreover, the documents had been executed in the name of the Respondent. The admissions of the Appellant in the present Appeal, reflect that the Respondent is the owner in respect of the Suit property.

34. It is also significant to refer to the assertions of the Appellant that he participated in the Panchayat Meeting on 19.11.2023, convened with the community witnesses for amicable settlement. The Respondent agreed to transfer 50 square yards out of 100 square yards to the Appellant in exchange of Rs.1,71,000/- paid through Bank transaction and documented by cheque, passbook entry and deposit slips. Despite receiving full consideration, the Respondent failed to formalize the Panchayat Agreement or effectuate title transfer, further demonstrating his *mala fide* intent.

35. This again reflects that Appellant was a licensee or else, he would not have again agreed to purchase the property.

36. It was the case of the Respondent that Appellant being his nephew, was permitted to reside in the Suit property since October, 2000. It was further asserted that in 2013, he had given an assurance that he would be vacating the premises despite which he failed to do so.

37. The Respondent has asserted that he has various documents like Municipal records, Utility Bills etc., to establish his uninterrupted possession in the Suit property, but this is also the case of the Respondent that the Appellant has been in possession of the property since October, 2000 as a permissive user.



2026:DHC:1062



38. The next aspect which emerges is that the Appellant has claimed to have perfected his title in the Suit property, on the basis of the *adverse possession*. It is asserted by him that because of his continuous, uninterrupted, open and hostile possession, he had become the owner by adverse possession.

39. However, it is established not only from the averments contained in the Petition which have essentially not disputed and the evidence of the Respondent in the Suit that Appellant was introduced in the property merely as a permissive user. Admittedly, the Appellant has not been able to show any documents of Title in his favour. He may have been in possession of the Suit property but it cannot be termed as open, hostile and adverse to that of the Respondent. **The plea of Adverse Possession as taken by the Appellant, is not tenable at the outset.**

40. It is pertinent to note that while the Respondent had filed the Suit for Possession, the Appellant failed to appear in response to the summons and was proceeded *ex-parte*. The Appellant has challenged this *ex-parte* Order dated 28.08.2024 on the premise that the service was effected upon him through pasting of the summons. It is claimed by the Appellant in his Appeal that at that time he was in his native village in Ghazipur, U.P and only his wife and son were available at the Suit premises.

41. Pertinently, it is his own admission that his family continued to reside in the premises. For him to claim that he had no notice of the summons is not made out on the averments made by the Appellant himself.

42. It has been contended that no Videography of pasting of the summons outside his house were taken. However, there is a Report of the Process



2026:DHC:1062



Server and also the statement of the Process Server recorded by the Court to conclude that the service through Pasting of the Summons was duly effected. There is a presumption of the correct name, genuineness of the acts done by a Government official in discharge of his official duty. There is nothing brought on record by the Appellant to repel that no service was effected on him, by Pasting. His contention that he was not duly served with the summons is, therefore, absolutely without any merit.

43. Another significant aspect is that he himself has admitted that he had appeared before the Panchayat on 19.11.2023 wherein the matter was settled. It is claimed that had he been aware of the pendency of the Suit, there was no reason for him to appear before the Panchayat and settle the matter.

44. Though, this contention may seem appealing, but in fact, it reflects that because he was aware of the Suit for Possession, he sought to settle the same with the Respondent by agreeing to purchase the 50 Sq. Yds of the Suit land. It is also important to note that there is no document of the Panchayat Settlement which has been placed on record nor any assertion that Rs.1,71,000/- has ever been transferred to the Respondent. This contention of the Respondent was required to be proved during the trial. Moreover, this alleged Agreement of purchase of property, would not change the nature of his possession in the Suit property as that of a Licensee till the execution of sale documents in his favour. There is not a single document of Title in favour of the Appellant on the basis of which he can claim that he had acquired the ownership in the Suit property.

45. As already noted above, all these are the defences of the Appellant



2026:DHC:1062



which should have been pleaded and proved in the Suit by way of Written Statement and evidence. The record shows that he despite service failed to appear and was proceeded *ex-parte* on 04.12.2023 and an Ex-parte Judgment of Possession has been passed against him.

46. It is further contended that the Application under Order IX Rule 13 CPC has been dismissed *vide* Order dated 22.09.2025 essentially on the ground of limitation. It is not in dispute that the Application under Order IX Rule 13 CPC was filed on 28.02.2025. The Appellant has contested the dismissal of the Application under Order IX Rule 13 CPC by Order dated 22.09.2025 on the ground that no service was ever effected upon him and the learned Trial Court has wrongly dismissed the Application.

47. The learned District Judge in the Order dated 22.09.2025 had considered the procedure under Order V and found that the summons had been served on the wife of the Defendant who had refused to accept the same. Thereafter, the summons was directed to be served through affixation which was effected on 18.10.2023. Order V Rule 17 CPC deals with the procedure in case the summons are refused to be accepted or the Defendant is not found in the premises. Since, there was a refusal to accept the Summons by the wife, the Summons were directed to be affixed on the House of the Defendant.

48. In terms of Order V Rule 19 CPC the Process Server was examined on 04.12.2023, who deposed about the affixation of Summons at the address of the Appellant as his House was found locked. There was due compliance of Order V Rule 19 CPC. The learned District Judge considered the due procedure as prescribed under Order V for the service of the Defendant



2026:DHC:1062



which had been duly complied.

49. The learned District Judge thus, rightly dismissed the Application under Order IX Rule 13 CPC.

50. The Appellant had placed reliance on The Koushaik Mutually Aided Cooperative Housing Society vs. Ameena Begum and Ors. 2023 15 SCR 841, wherein it had been observed that when there is an ex-parte Decree, the Defendant has three options i.e. to file an Appeal against the ex-parte Judgment; to move an Application under Order IX Rule 13 CPC or to seek the Review of the ex-parte Decree. The Appellant herein had availed his twin remedy of filing an Appeal as well as to challenge the Order under Order IX Rule 13 CPC. However, he has miserably failed to sustain either the Appeal or the challenge to the Order under Order IX Rule 13 CPC.

51. In the light of the aforesaid discussion, it is held that there is no merit in challenging the Ex-parte Decree dated 28.08.2024 and the dismissal of the Application under Order IX Rule 13 CPC by Order dated 22.09.2025. The Appeal is accordingly, dismissed.

52. The Appeal is accordingly disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 2, 2026/RS/va