



2025:DHC:3006



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

Date of Decision: 15.04.2025

+ **C.R.P. 377/2023**

PANKAJ CHETAN

.....Petitioner

Through: Mr. Akshat Gupta, Advocate.

versus

ANUJ CHETAN

.....Respondent

Through: Mr. Rakesh Kumar, Advocate with
Respondent in person.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioner/Defendant under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against two orders dated 04.12.2021 and 26.10.2023 passed by learned Additional District Judge-01, South East District, Saket Courts, New Delhi.

2. By the Order dated 04.12.2021, the right to file written statement of the Respondent/Plaintiff was closed since no one appeared on his behalf despite service of summons on 06.12.2020 and the matter was put up for *ex parte* evidence on 14.03.2022.

2.1 Subsequently, by the Order dated 26.10.2023, an Application under Order IX Rule 7 of the CPC filed by the Petitioner/Defendant to set aside order dated 14.12.2021 [hereinafter referred to as "Application under Order IX Rule 7 of the CPC"] was dismissed.



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3. A Coordinate Bench of this Court had, by an order dated 14.12.2023, kept the proceedings before the learned Trial Court in abeyance.

4. Learned Counsel for Petitioner/Defendant has made the following submissions. It is submitted that the Petitioner/Defendant and the Respondent/Plaintiff are real brothers. In view of the disputes between them, the Respondent/Plaintiff filed a suit for recovery, permanent and mandatory injunctions in the sum of Rs.66,72,071/- along with interest against the Petitioner/Defendant.

5. The suit was listed on 15.12.2020 for appearance of the Petitioner/Defendant, however, it is submitted, that in view of the Covid pandemic and paucity of funds, the Petitioner/Defendant was unable to engage a counsel. Accordingly, on 06.12.2020, Petitioner/Defendant sent an email to the Court Master of the learned Trial Court requesting for additional time to engage Counsel and file a written statement.

5.1 Thereafter, since no written statement was filed nor did anyone appear on behalf of the Petitioner/Defendant, by an order dated 04.12.2021, the Petitioner was proceeded with *ex parte* and his right to file a Written Statement was closed.

6. Learned Counsel for the Petitioner/Defendant, relying on the judgment of the Supreme Court in *suo moto* W.P.(C) 3/2020, ***In Re: Cognizance for Extension of Limitation***¹, submits that the Order dated 04.12.2021, was an adverse order which was passed despite notification and the circulars which provided that no adverse orders be passed in non/urgent

¹ (2022) 3 SCC 117



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routine matters during the pandemic. However, it is contended that the learned Trial Court has found that extension of limitation under the ***In Re: Cognizance for Extension of Limitation*** case would expire on 30.05.2022, while the Application under Order IX Rule 7 of the CPC to set aside the order dated 04.12.2021 was filed by the Petitioner only in December, 2022. Thus, the learned Trial Court dismissed the Application under Order IX Rule 7 of the CPC in view of the fact that no ground has been made out to explain the delay in filing the application between May, 2022 and December, 2022.

7. Learned Counsel for the Petitioner/Defendant relies upon the Application under Order IX Rule 7 of the CPC and the Additional Affidavit filed on 25.10.2023 to submit that the Petitioner/Defendant had been trying to make efforts to settle the disputes between his brother (Respondent herein) and himself. The Petitioner has relied upon emails dated 29.05.2022 and 06.12.2022 and paragraphs 3 of the Application under Order IX Rule 7 of the CPC in this behalf.

7.1 In addition, it is contended on behalf of the Petitioner that the Petitioner has set these details out in the Additional Affidavit which was filed before the learned Trial Court on 25.10.2023 [hereinafter referred to as the “Additional Affidavit”] as well.

8. Learned Counsel for the Respondent/Plaintiff, on the other hand submits, that there were no settlement talks going on between the parties and that the learned Trial Court has rightly dismissed the Application under Order IX Rule 7 of the CPC. However, it is confirmed that the Petitioner and the Respondent/Plaintiff are brothers and the *inter se* disputes had arisen *qua*



their ancestral property.

8.1 Learned Counsel for the Respondent/Plaintiff further submits that although the emails have been sent by the Respondent/Plaintiff to the Petitioner, but there was no response from the Petitioner to those emails, which shows that there were no talks of settlement.

9. Learned Counsel for the Petitioner in Rejoinder refutes these contentions and submits that the very fact that the emails were addressed by the Respondent/Plaintiff means that there were some talks going on between the parties.

10. Order IX Rule 7 of the CPC reads as follows:

“ORDER IX- APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

...7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance— Where the Court has adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance.”

11. The provisions of Order IX Rule 7 of the CPC provide for the fact where the Court has adjourned the hearing of the suit *ex-parte* and the defendant, at or before such hearing, appears and assigns good cause for defendant’s previous non-appearance, the Court may, set such terms or direct cost or otherwise and the defendant can be heard in answer to the suit as if the defendant had appeared on the day, which was fixed for his appearance.

12. The record reflects that both the parties are brothers and that the



Petitioner had both in his Application under IX Rule 7 of the CPC and the Additional Affidavit set out that there were talks of settlement between the parties and filed the emails in proof thereof.

12.1 The Petitioner has in the Application under Order IX Rule 7 of the CPC stated that the Petitioner had parallelly been trying to make efforts to settle the disputes between his brother (Respondent herein) and himself. Reliance has been placed by the Petitioner upon emails dated 29.05.2022 and 06.12.2022 in this behalf which have been also been Annexed by the Petitioner along with his Application. Paragraph 3 of the Application under Order IX Rule 7 of the CPC is set out below:

“3. That as result of the consistent and continuous effort of the Applicant herein, he has been successful in getting the issues that are involved herein to be settled amicably between the parties, which, inter-alia, is evident from e-mail exchanges between the Plaintiff and the Defendant/Applicant herein. A copy of the e-mails dated 29.05.2022 and 06.12.2022 exchanged between the Plaintiff and the Defendant/Applicant herein, inter-alia, evidencing the successfully negotiations for settlement between the parties along with the Certificate under Section 65B of the Indian Evidence Act is annexed herewith and marked as ANNEXURE A-1 (Colly)”

[Emphasis Supplied]

12.2 In addition, Petitioner has also filed an additional affidavit dated 25.10.2023 wherein the Petitioner has reiterated his contention that the Petitioner was parallelly trying settle the disputes between his brother (Respondent herein) and himself. Reliance is placed on paragraph 13, which is set out below:

“13. I say that parallelly I had been trying to make efforts for settlement of disputes between my brother and myself. Because the superior Courts are emphasizing time and again that the civil litigation should be avoided if there is even a remote possibility of settlement and that is why the parties to this suit were making sincere efforts without



using the official machinery like Mediation Centre or Lok Adalat at the relevant time and their efforts should be appreciated and not be penalized.”

[Emphasis Supplied]

13. It is apposite to set out the e-mails dated 29.05.2022 and 06.12.2022 below:

Email dated 29.05.2022

“*anuj chetan anujchetan84@gmail.com
To: Pankaj Chetan pankaj7@gmail.com*

*Hi
Plz check the file and call me if you find some error
Password is fluder
Thanks and Regards*

*Anuj Chetan
9810323666”*

xxx

xxx

xxx

Email dated 06.12.2022

“*anuj chetan anujchetan84@gmail.com
To: Pankaj Chetan pankaj7@gmail.com*

*password is fluder
Thanks & Regards*

*Anuj Chetan
9810323666”*

13.1 The first e-mail is sent by the Respondent/Plaintiff to the Petitioner/Defendant which contains an attachment of an excel sheet titled “*ledger acc 1 – xlsx*”.

13.2 The second e-mail is also sent by the Respondent/Plaintiff to the



Petitioner/Defendant and once again contains an attachment of an excel sheet titled “*ledger acc 1 – xlsx*”. The fact that the two attachments are different can be ascertained from the date of the e-mails and the size of the attachments. Clearly thus, some communication was being exchanged between the parties.

14. The Delhi High Court in terms of Circular No. 569/RG/DHC/2021 dated 19.08.2021 had directed that the earlier directions that no adverse order shall be passed in the District Courts in Delhi in case of non-appearance would stand withdrawn from 24.08.2021 in the following terms:

“The earlier direction issued by this Court vide Office order No. 256/RG/DHC/2021 dated 08.04.2021 that no adverse orders shall be passed by the District Courts in Delhi in case of on (sic. Non) appearance of parties and/ or their counsel stands withdrawn w.e.f. 24.08.2021.”

Thus, the contention of the Petitioner that adverse orders could not be passed by the learned Trial Court is without merit.

15. The Supreme Court in the ***In Re: Cognizance for Extension of Limitation*** case has held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purposes of limitation. It has been further held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, all persons shall have a limitation period of 90 days from 01.03.2022 and in the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. The Supreme Court further clarified that the period from 15.03.2020 till 28.02.2020 shall stand excluded in computing the period under any statute which prescribe a limitation for institution of



proceedings and termination of proceedings. The relevant extract is set out below:

“5.1. The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings”

[Emphasis Supplied]

15.1. Relying on the *In Re: Cognizance for Extension of Limitation* case learned Trial Court has held that the Petitioner/Defendant could not have proceeded with *ex-parte* by order dated 04.12.2021. However, learned Trial Court has further held that the Application under Order IX Rule 7 of the CPC cannot be allowed since the Application was filed by the Petitioner in December 2022 and no plausible explanation has been given as to the delay caused after extension of period of limitation had expired i.e. for the time period between May 2022 till December 2022. The relevant extract of the



Impugned Order dated 26.10.2023 is reproduced below:

*“7. On perusal of record, it becomes clear the summons of the suit were served upon defendant during COVID-19 pandemic when the orders of Hon’ble Supreme Court of India in Suo Moto Writ Petition (C) No.3 of 2020 was in effect. **Therefore, to the extent that defendant could not have been proceeded ex-parte vide order dated 04.12.2021 has some merit.***

*8. However, this application has been filed only on 08.12.2022 which is more than 90 days after expiry of extended period of limitation as provided in order dated 10.01.2022 of Hon’ble Supreme Court of India in Suo Motu Writ Petition(C) No.3 of 2020. The said period of 90 days would expire on 30.05.2022. **Admittedly, the application has been filed only in December 2022 i.e. almost six months after the expiry of the extended period of limitation. No ground has been made out in the application to explain the delay between May 2022 till December 2022.**”*

[Emphasis Supplied]

16. A Coordinate Bench of this Court in the case of ***East India Cotton Manufacturing Co. Ltd. v. S.P. Gupta***², while relying on the judgement of the Supreme Court in the case of ***Sangram Singh v. Election Tribunal, Kotah***³ and in the case of ***Arjun Singh v. Mohindera Kumar***⁴, has held that if the defendant shows good cause for his non-appearance on previous date or dates of *ex-parte* hearing of the suit, the defendant can be allowed to contest the suit. The relevant extract of the ***East India Cotton Manufacturing Co. Ltd.*** case is reproduced below:

“6. The questions for decision are whether the application under Order 9 Rule 7 of the Code was within time and it discloses good cause for setting aside the Order proceeding ex-parte. Order 9 Rule 7 of the Code reads as under:—

“Where the Court has adjourned the hearing of the suit ex-parte, and

² 1985 SCC OnLine Del 79

³ AIR 1955 SC 425

⁴ A.I.R. 1964, S.C. 993 (1004)



the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs, as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

ad appeared on the day fixed for his appearance.”

*The words “Where the Court has adjourned the hearing of the suit ex-parte”, means that there is to be hearing on the date to which the suit stands adjourned. If the “Hearing” of the suit has been completed and the Court has adjourned the suit merely for the purpose of pronouncing judgment, there is clearly no adjournment of “the hearing” of the suit and in such circumstances Order 9 Rule 7 would have no application. **But if the suit has been adjourned for hearing ex-parte such as for evidence etc. and it is further adjourned for arguments it would mean that ex-parte hearing of the suit was not completed and the hearing of the suit ex-parte was adjourned. Under this rule if an application is made on any date fixed for ex-parte hearing of the suit showing good cause for his non-appearance on previous date of dates, the application would be in accordance with Order 9 Rule 7 of the Code. If the applicant establishes good cause for his previous non-appearance the Court would have jurisdiction to set aside the order proceeding ex-parte.***

7. In *Sangram Singh v. Election Tribunal, Kotah*, AIR 1955 SC 425 it has been held that:—

“If at an adjourned hearing the defendant appears and shows good cause for his “previous non-appearance.” He can be heard in answer to the suit as if he had appeared on the day fixed for his appearance.” This cannot be read to mean that he can not be allowed to appear at all if he does not show good cause. All it means is that he can not be relegated to the position he would have occupied if he had appeared. If a party does appear on “the day to which the hearing of the suit is adjourned”, he can not be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing”.

Further, if the defendant wants to put in written statement he can do so only if he shows good cause for his previous absence. In *Arjun Singh v. Mohindera Kumar*, A.I.R. 1964, S.C. 993 (1004) it has been observed as follows:

“On the terms of Order 9 Rule 7 if the defendant appears on such adjourned date and satisfies the court by showing good cause for his non-appearance on the previous day or days he might have the earlier proceedings recalled and have the suit heard in his presence. On the other hand, he might fail in showing good cause. Even in such



a case he is not penalised the sense of being forbidden to take part in the further proceedings of the suit or whatever might still remain of the trial, only he can not claim to be relegated to the position that he occupied at the commencement of the trial”.

e relegated to the position that he occupied at the commencement of the trial”.

8. The law laid down by the Supreme Court makes it clear that if the defendant shows good cause for his non-appearance on previous date or dates of ex-parte hearing of the suit, he can be allowed to file the written statement and contest the suit and if no good cause is shown he can be allowed to take part in further proceedings of the suit...”

[Emphasis Supplied]

17. Undisputedly, the Petitioner/Defendant and Respondent/Plaintiff were brothers and were involved in a *inter se* family dispute. It is also not disputed that two emails were sent by the Respondent/Plaintiff to the Petitioner/Defendant on 29.05.2022 and 06.12.2022. Although, these emails were not responded to, at this stage it cannot be said that there were no settlement talks between the parties. In view of the fact that the parties were trying to settle their disputes during the period between May 2022 to December 2022, the Petitioner has shown plausible reasons for the delay in filing the Application under Order IX Rule 7 of the CPC. Thus, it cannot be said that there was no good cause for the delay.

18. Accordingly, the Impugned Orders dated 04.12.2021 and 26.10.2023 are set aside, however subject to payment of costs in the sum of Rs.25,000/- to the Respondent/Plaintiff.

19. List before the learned Trial Court on 19.05.2025 for further proceedings.

20. The Petitioner shall file his written statement before the learned Trial



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Court within two weeks from today.

20.1 The Replication shall be filed within two weeks thereafter.

21. Learned Counsel for the parties submit that they will not take any unnecessary adjournments before the learned Trial Court. The parties are bound down by the statement made by their counsel today.

22. The Petition is disposed of in the foregoing terms.

TARA VITASTA GANJU, J

APRIL 15, 2025/ ha/pa

[Click here to check corrigendum, if any](#)