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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 10th July, 2025*+ **FAO 390/2019
ROHIT CHATURVEDI**

.....Appellant

Through: Mr. Vivek Bhardwaj, Advocate.

Versus

RACHNA CHATURVEDI & ORS

.....Respondent

Through: Mr. Deeptakirti Verma, Advocate for
R-1.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****JUDGMENT (oral)**

1. A civil suit i.e. CS OS No. 2671/2008 had been filed by Mr. S.K. Chaturvedi before this Court on its original side. It was directed against the following three defendants:-

Mr. Rohit Chaturvedi	Defendant No.1
Ms. Rachna Chaturvedi	Defendant No.2
Dr. A.K. Chaturvedi	Defendant No.3

2. In the abovesaid suit said Ms. Rachna (defendant No2) filed a counter claim which was registered as Counter Claim No. 57/2009 and it was directed against the following three respondents:-

Mr. S K Chaturvedi	Respondent No.1
Mr. Rohit Chaturvedi	Respondent No.2
Dr. A.K. Chaturvedi	Respondent No.3



3. It will be also important to mention here that Mr. S.K. Chaturvedi is father of Rohit Chaturvedi and Ms. Rachna Chaturvedi is estranged wife of Rohit Chaturvedi.
4. With the change in pecuniary jurisdiction, the abovesaid civil suit, as well as counter claim, got transferred to District Court.
5. As far as the civil suit is concerned, it was *dismissed-in-default* and for *non-prosecution* on 27.07.2017 but the counter claim was, eventually, decreed on 06.06.2018 in favour of counter-claimant.
6. Such decree was *ex-parte* in nature.
7. The appellant herein is Mr. Rohit Chaturvedi who is respondent No. 2 in the abovesaid counter claim.
8. According to him, he was never aware about filing of any suit or, for that matter, any such counter-claim and never authorised any counsel to represent him in said suit and counter claim.
9. The appellant, accordingly, moved an application under Order IX Rule 13 CPC which has been dismissed by learned Trial Court on 09.08.2019 and it is against the abovesaid order that the present appeal has been filed.
10. Before appreciating the contentions raised before this Court, it will be appropriate to see the averments made in the application moved under Order IX Rule 13 CPC as well as the relevant provision.
11. In the application, the appellant merely claimed that he had not received any summons of “said case” and had never appeared before the Court or, for that matter, never authorized any Advocate to file any reply on his behalf.



12. According to him, the written statement and the affidavit appearing on record were forged as he never signed any such document and he never authorized Sh. M. Qayam-ud-din, advocate to represent him, either in the abovesaid Civil Suit or in the counter-claim.

13. According to him, he was never aware about any pending proceedings and it was in the abovesaid backdrop that *ex-parte* decree has been challenged by contending that it was not on merit and was passed without providing any reasonable opportunity of personal hearing to him.

14. According to him, he learnt about the judgment dated 06.06.2018 on 28.03.2019, when the counter-claimant, along with number of persons, visited their flat and tried to dispossess him forcefully.

15. The abovesaid application was resisted by the respondent/counter-claimant.

16. Learned Trial Court, vide impugned order dated 09.08.2019, dismissed the abovesaid application while observing that counsel of the applicant had already appeared in the main suit and the same counsel, thereafter, started representing him in the counter-claim as well. Since the appellant was defendant in the main suit as well as in the counter-claim, and he was re-represented by the same counsel, the supply of copy of counter-claim to him was due and sufficient service of the counter-claim upon the applicant. It also observed that both the written statements (written statement filed *qua* the suit and the written statement in response to the counter-claim) were supported with affidavits and such written statements and affidavits contained signatures of the applicant.

17. It was also observed that the applicant had, simply, contended that his signatures appeared to be fake, and had been obtained in a fraudulent



manner by someone but he failed to elaborate the same.

18. Learned Trial Court further observed that there appeared to be a “definitive similarity” in such signatures and, since he was duly represented by Sh. M. Qayam-ud-din, Advocate, the applicant had no case.

19. Learned counsel for the appellant submits that there was no service, even with respect to the main suit, upon the appellant and, therefore, there was no reason for him to have been aware of any such suit or, for that matter, to have asked any advocate to represent him.

20. Quite clearly, the averments in this regard are bald and unsubstantiated.

21. The aspect of service in the main suit cannot be brushed aside in a casual and nonchalant manner. Such service took place when the suit was pending before this Court on its original side.

22. For the reasons best known to the appellant, he never drew any attention of the learned Trial Court to such service report. Manifestly, he would be in no position to attack such report and it must be going against him and, therefore only, he did not make any reference about such service report in his entire application moved under Order IX Rule 13 CPC. This deliberate omission goes against him.

23. And, if he was duly served with summons in the main suit, the service of counter claim upon his counsel constitutes due and proper service.

24. Appellant has baldly asserted that ‘some counsel’ appeared unauthorizedly and filed written statement on his behalf.

25. Had that been the case, the natural, immediate and automatic reaction of any such party would have been to immediately take strict legal action against such advocate, who displayed the audacity to appear unauthorizedly



and then to commit forgery in High Court record.

26. Interestingly, no complaint of any nature was lodged by the appellant either with the Bar Council or, with the police, all these years.

27. This also depicts the hollowness of his claim.

28. During course of the arguments, learned counsel for the appellant also submitted that the appellant used to be abroad and, quite possibly, at the time of the alleged service also, he might not be even in India.

29. Fact remains that, no such assertion is found to be there in the application moved by him before the learned Trial Court and, for the reasons best known to him, he did not even place on record copy of his Passport, to give any kind of impetus to his such belated assertion.

30. Order IX Rule 13 CPC read as under:-

“13. Setting aside decree ex parte against defendant.—

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside



that ex parte decree.]”

(emphasis supplied)

31. It is quite clear from the perusal of the material placed before this Court that the appellant has miserably failed to demonstrate that he was never served with the summons in the main suit. His bald averment would not influence this Court to set aside decree. Moreover, since no action was ever taken, or attempted to be taken, against said counsel, there is no reason to hold that Sh. M. Qayam-ud-din was never authorized by him to represent him in the suit as and in the counter-claim.

32. Learned counsel for the appellant also submitted that if at all the written statement had been prepared in terms of the directions given by the appellant, he would not have made any admission therein, detriment to his own interest. Thus, he wants to indicate that written statement was not under his instructions but had been got procured and manipulated and such fact is sufficient to set aside decree.

33. However, such argument also does not cut any ice as, admittedly, the appellant and his father are on the same page and the admission, if any, is *vis-a-vis* his father and there is no admission *qua* the counter-claimant i.e. his estranged wife.

34. In view of the above, this Court does not find any merit in the present appeal and same is dismissed.

(MANOJ JAIN)
JUDGE

JULY 10, 2025/sw/ss/pb/SS