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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 16th July, 2025**
+ **FAO 181/2025 & CM APPL. 41467-41469/2025**

RAJ KUMAR

.....Appellant

Through: Mr. Rahul, Mr. Rahul Kumar and Mr.
Ashutosh Tiwari, Advs.

versus

KANAHIYA LAL AND ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The appellant challenges dismissal of his application moved under Order IX Rule 13 Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'].
2. This Court has gone through the impugned order dated 13.02.2025.
3. The learned Trial Court, while taking up the abovesaid application, in order to ensure that there is no prejudice to the applicant (appellant herein), framed issues even and permitted him to lead evidence. The applicant examined four witnesses in order to substantiate his assertions made in the application moved under Order IX Rule 13 CPC.
4. The abovesaid application has been dismissed by the learned Trial Court on the point of limitation as well as on merits.
5. The impugned order would clearly indicate that the applicant had examined four witnesses and if the applicant was having any reservation or grievance with respect to the alleged service of summons upon him, it is really intriguing to comprehend as to what stopped him from calling the concerned



Process Server or, for that matter, the concerned Postman as his witness.

6. No steps, in this regard, seems to have been taken by the applicant, as is evident from Paragraph 12 of the impugned order, which reads as under:

“12. Perusal of record reveals that as per report of process server dated 19.11.2022, the summons were served to the defendant through his wife. As per report of process server dated 30.01.2023, it is mentioned in the report that he has reached at first floor also of the suit property and at the door he address orally to the resident who resided at first floor but the said resident closed the door. Hence, it is clear that the defendant deliberately avoided the service. Moreover, the summons posted to the defendant at his address returned back unclaimed. The defendant/applicant averred that he did not receive summons and the service of summons was manipulated by the plaintiff. Despite given opportunity the defendant has not examined the process server or post man who might have thrown the light to the truth. Non examination of material witness invites the adverse inference against the defendant/applicant. Therefore, it is presumed that the defendant was served with the summons on 19.11.2022 and he deliberately did not appear before the court. The plea is made by the defendant to show that the summons were not served upon the defendant. As far as it is concerned with the said plea, the process server or postman was the best person who could have brought the truth in front of court.”

7. In view of the above, there cannot be said to be any illegality or perversity in the impugned order as the best evidence has been held back by the appellant himself.

8. When asked, learned counsel for the petitioner submitted that the suit was for possession and the plaintiff was seeking his ejection. He, however, submits that though the appellant herein was earlier occupying the suit premises as a tenant but thereafter, there was an *agreement to sell* between the parties and the appellant herein had purchased the property from such landlord. However, when asked, it was further apprised that, so far, the appellant had not filed any suit seeking specific performance.

9. Be that as it may, this Court does not find any reason to interfere with the impugned order as the findings have been given after giving due



opportunity of adducing evidence to the applicant and the appellant herein himself is to be blamed as he did not even care to examine the concerned Process Server, on whose report he was, eventually, proceeded against *ex parte*.

10. The appeal is, accordingly, dismissed in *limine*.
11. All pending applications also stand disposed of.

(MANOJ JAIN)
JUDGE

JULY 16, 2025/gunn/SS