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

% ***Date of Decision: 19th May, 2025***

+ CM(M) 529/2023 & CM APPL. 15698/2023

JASUJA ELECTRONICS THROUGH ITS PROPRIETOR MR

RAVI KANT JASUJA

.....Petitioner

Through: Mr. Sourav Bajaj, Advocate (Through
VC)

versus

EMPIRE HOME APPLIANCES PVT. LTD

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner seeks recall of order dated 25.02.2023 whereby his request for setting aside *ex parte* order did not find favour with the learned Trial Court.
2. When this petition was taken up for the first time on 29.03.2025, there was also a direction to learned Trial Court to defer the proceedings and it is apprised that the next date before the learned Trial Court is 30.07.2025.
3. The present petition was taken up on several previous occasions but on most of such occasions, there was no appearance from the side of the respondent. Reference be made to orders dated 06.03.2024, 20.08.2024, 21.11.2024 and 06.05.2025.
4. Today also, there is no representation from the side of the respondent/plaintiff.
5. Coming to the factual matrix of the present case, according to the case



of petitioner, who is defending a civil suit, though summons of the suit were received by him on 17.03.2021 and though he even contacted one Advocate, fact remains that such Advocate neither appeared before the learned Trial Court nor gave any information relating to the status of this case. The petitioner was, eventually, proceeded against *ex parte* on 09.10.2021 when the country was, otherwise, reeling under the pandemic of Covid-19. It is submitted that all such facts have not been appropriately considered by the learned Trial Court and his application has been dismissed.

6. Such order is under challenge.

7. According to petitioner, on receiving summons, one Mr. Dixit, advocate was contacted and engaged by the defendant but he did not appear, primarily, on account of the fact that there was lockdown and impaired functioning of the Courts. Subsequently, defendant contacted one other counsel i.e. Mr. Sourav Bajaj, who, then, went through the information available on the website of the District Courts and apprised the petitioner that it had been proceeded against *ex parte*. It was, thereafter, only that the petitioner moved an application on 01.08.2022 seeking to set aside the *ex parte* order which has been dismissed by the learned Trial Court. It will be also important to mention that plaintiff was also given repeated opportunities by learned Trial Court to file reply to the aforesaid application but to no avail and his opportunity to file any reply to the aforesaid application was closed by learned Trial Court on 03.02.2025.

8. Impugned order would indicate that the learned Trial Court was of the view that there was no genuine explanation coming from the side of the defendant to the effect whether it had made any effort to enquire about the suit proceedings, particularly, when it had clear knowledge of the pendency



of the aforesaid suit. With respect to the aspect related to impaired functioning and country being hit by pandemic of Covid-19, learned Trial Court recorded that except for the hearing, which took place on 28.04.2021, all subsequent hearings were conducted through physical mode and observing that it was the duty of the defendant to have kept proper follow up, application has been dismissed holding that it was devoid of any merit.

9. Suit in question seeks recovery of Rs. 11,39,400/-.

10. It is not a case where the petitioner herein was having no knowledge of the suit. Proprietor of the petitioner, in no uncertain terms, admits that he had received the summons.

11. The summons were received by them on 17.03.2021 and they were proceeded against *ex parte* on 09.10.2021 and the application seeking to set aside the *ex parte* order was filed by them on 01.08.2022.

12. All these three dates are very crucial in the present context.

13. Petitioner is trying to take benefit of the fact that at the relevant point of time, the Courts' functioning was impaired and limited and on account of lockdown, the concerned counsel could not appear before the learned Trial Court.

14. However, this seems to be an assertion in the air.

15. The complete particulars of such counsel with the name of Mr. Dixit have not been given. If at all, he had been instructed by the petitioner, there should have been some affidavit on his behalf also to the effect that he had been so instructed but on account of lockdown he could not appear. Evidently, the entire blame is, now, being shifted to the previous counsel whose complete particulars have not even been supplied and, admittedly, against whom, no action seems to have been taken by the petitioner. The



endeavour is to simply earn some compassion by pleading that a party should not be penalized for inaction or negligence of its counsel. This Court has, in number of cases, criticized such general tendency which seems to be over-growing and spreading. The act of condemning someone behind the back is, even otherwise, not appropriate. Reliance be placed upon *Rahul Mavai vs. Union of India and Others: 2024 SCC OnLine Del 9050* wherein this Court while disapproving the practice of shifting the burden of negligence on the shoulder of the counsel, also observed that *a litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.*

16. Moreover, if the information was available on the website of Delhi District Courts, then even petitioner would be knowing the same and it seems that he is trying to take undue advantage of lockdown.

17. This Court is cognizant about the judgment given by Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation, 2022 SCC OnLine SC 27* and even if the period falling from 15.03.2020 to 28.02.2022 is excluded, it does not advance the case of petitioner as there is no reason, much less a plausible one, assigned by the petitioner as to why application was moved by him as late as on 01.08.2022.

18. Finding no merit and substance in the present petition, same is, accordingly, dismissed.

19. All pending applications also stand disposed of in the aforesaid terms.

**(MANOJ JAIN)
JUDGE**

MAY 19, 2025/dr/shs/js