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

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Date of Decision: 23rd July, 2025

+ **FAO 200/2025 & CM APPL. 43702-43703/2025**
SURYA PRAKASH

.....Appellant

Through: **Mr. Suresh Chandra Sharma and Mr. Sandeep K Mishra, Advocates.**

versus

SMT KRISHNA GAUR

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Appellant takes exception to order dated 22.01.2025 whereby his application moved under Order IX Rule 13 CPC has been dismissed by the learned Trial Court.
2. The case of the appellant is to the effect that he did not receive any summons and never came to know about the suit in question when it was pending.
3. The suit in question was instituted on 04.03.2020 and the judgment has been delivered on 13.04.2022.
4. The plaintiff was seeking possession, arrears of rent and damages/*mesne profits*.
5. According to him, the suit property had been leased out to the defendant at a monthly rent of Rs.16,500/- and despite expiry of lease agreement, which expired on 24.09.2018, the possession was not handed over



and, rather, the defendant locked the premises and stopped paying rent of the suit property and it was in the abovesaid backdrop that he was compelled to file the abovesaid suit, after serving legal notice dated 27.11.2019.

6. The observations appearing in the judgment dated 13.04.2022 would indicate that despite service by way of publication, there was no appearance from the side of the defendant and, resultantly, the *ex-parte* decree was passed against him.

7. According to the appellant, he had never received any notice/summons from the Court and, therefore, his non-appearance was neither intentional nor deliberate.

8. The application moved by him is found to be a sketchy one running into 1½ pages only and when the abovesaid application was considered by the learned Trial Court, it took note of the fact that summons were issued to him *vide* order dated 05.12.2020 through all modes, including electronic mode.

9. The summons sent to him through speed post received back unserved and, thereafter, there was direction to serve him through publication in newspaper.

10. Despite such publication, he did not appear before the Court and, therefore, he was proceeded against *ex-parte*.

11. Learned Trial Court also recorded the fact that summons were sent to him through electronic mode and that summons were sent to him on his Mobile No.09311222212. As per the report of the Nazarat Branch, there was due service through WhatsApp and despite delivery of summons on his such mobile number, there was no appearance from his side.

12. During the arguments before the learned Trial Court, the learned Trial Court had put a specific query to the applicant whether said number belonged



to him and, in response thereto, his answer came in affirmative.

13. However, he did not bother to apprise the Court as to why despite such service through WhatsApp, he did not put in appearance before the learned Trial Court.

14. It, therefore, clear that in the case in hand, defendant was directed to be served through publication as well as through electronic mode (WhatsApp) and despite such service through publication and service through WhatsApp, the defendant did not bother to appear before the learned Trial Court.

15. In such a situation, request coming from the side of the appellant that the *ex-parte* decree be set aside as the summons were not duly served upon him, does not seem to be sustainable.

16. Order IX Rule 13 CPC reads 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 that 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.”



17. The abovesaid provision, thus, clearly contemplates two different situations on the existence of anyone of which, the Court can set aside *ex-parte* decree.

18. The first is where the summons have not been “duly served” and the second is where any such party was “prevented by any sufficient cause” from appearing when the suit was taken up for hearing.

19. The grievance of the appellant is that he was never “duly served”.

20. In the application moved by him under Order IX Rule 13 CPC, he claimed as under:-

- “1.That the above noted case was decided on ex-parte on dated 13/04/2023 by the Sh. Jitender Singh, Ld. ADJ- 06 (Central) Tis hazari courts, Delhi.*
- 2.That the defendant has not received any notice/summons from this Hon'ble Court from this Hon'ble Court.*
- 3.That the defendant has come to know about the ex-party order dated 13/04/2022 through service by way of publication.*
- 4.That the defendant never received any summons/notice from i.e. Hon'ble Court.*
- 5.That the absence of the defendant and his counsel on dated 13/04/2022 is neither intentional nor deliberate but due to the above said reason.”*

21. The service in the present matter, as already noticed above, is, eventually, through electronic mode (Whatsapp) and also through publication in a Newspaper.

22. The Court was compelled to issue order for such substituted service as the ordinary service did not yield any positive result.

23. Once the service is found to be effected through electronic mode or, for that matter, through publication in a Newspaper, there is presumption that there is a “due service” and it is for the concerned party to rebut such presumption by showing some material of impeccable and sterling character.



24. His bald denial would not serve any purpose.
25. Before the learned Trial Court, he though, admitted that he owned that particular mobile number on which the summons were transmitted to him but he does not care to divulge as to why despite such service, he did not appear before the learned Trial Court.
26. Similarly, there is nothing coming from his side that the Newspaper in question was not having circulation in the area where he was residing ordinarily. He also does not dispute that his addresses were correctly mentioned in the suit as well as on the summons issued by the Court.
27. Resultantly, finding no merit in the present appeal, the appeal is hereby dismissed in *limine*.
28. Pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

JULY 23, 2025/ss/SS