



2025:DHC:6094



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

% ***Date of Decision: 25th July, 2025***

+ CM(M) 1357/2025 & CM APPL. 44601/2025 & CM APPL.
44602/2025

VIJAY KUMAR

.....Petitioner

Through: Mr. Diwas Kumar, Mr. Shraveen Kr.
Verma, Ms. Diksha Verma and Mr.
Devashish Shandilya, Advocates.

versus

MAHINDER SINGH

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner herein is aggrieved by dismissal of his application moved under Order XXXVII Rule 4 CPC.
2. It is intriguing as to how the petitioner is entitled to take any shelter behind Order XXXVII Rule 4 CPC.
3. Admittedly, in the suit in question, which was summary in nature, the petitioner had not only put in appearance but had also filed an application seeking *leave to defend*.
4. His only grievance is that after filing his such application seeking *leave to defend*, his counsel did not appear and he also could not file any written synopsis and in his absence, a judgment has been passed whereby *leave to defend* was refused.
5. The objective behind incorporating Order XXXVII Rule 4 CPC is not



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far to seek. It kicks in only when there is a default decree or *ex-parte* decree, as it is generally called.

6. The learned Trial Court could have granted some indulgence if, on the basis of special reasons assigned, the learned Trial Court was convinced that either the defendant could not enter his appearance or, for that matter, could not file application seeking *leave to defend*.

7. Here, both the conditions are met as appearance was put in and *leave to defend* was filed which was, eventually, considered by the learned Trial Court. In such a peculiar situation, the only recourse available to the petitioner, if advised, would be to challenge the decree on merits, instead of seeking to set aside the same under Order XXXVII Rule 4 CPC.

8. Viewed thus, this Court does not find any merit in the present petition and same is, hereby, dismissed in *limine*.

9. Pending applications also stand disposed of.

**(MANOJ JAIN)
JUDGE**

JULY 25, 2025/ss/SS