



2025:DHC:7417



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Date of Decision: 26<sup>th</sup>, August, 2025**  
+ CM(M) 1614/2025 & CM APPL. 52997/2025 & CM APPL.  
52998/2025

DEVANAND SHARMA & ANR. ....Petitioners

Through: Mr. Hemant Vats, Mr. Vishal Garg,  
Advs.

versus

MAHENDER PAL ....Respondent

Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. A summary suit under Order XXXVII CPC was filed against the petitioners herein.
2. Plaintiff was seeking recovery of Rs.6.50 lacs and pursuant to the summons issued by learned Trial Court, defendants entered their appearance.
3. Plaintiff moved an application seeking issuance of *summons for judgment* and pursuant to that, an application seeking leave to defend was also filed by defendant, *albeit*, belatedly.
4. Since the application seeking leave to defend was not filed within the prescribed period, the learned Trial Court, eventually, decreed the suit on 24.05.2023.
5. It was only after the abovesaid decree had been passed that the defendants woke-up from their slumber and moved an application under Order XXXVII Rule 4 CPC on 31.08.2023 with the prayer that such decree



may be set aside.

6. Fact, however, remains that there is no change in the manner in which defendants were conducting themselves before the learned Trial Court as when the matter was, eventually, taken up by learned Trial Court on 15.04.2025, there was no appearance from their side and, accordingly, their abovesaid application was dismissed for *non-appearance* and *non-prosecution*.

7. Learned Trial Court also recorded that even the cost which had been imposed upon them *vide* order dated 03.07.2024, had not been cleared.

8. The things did not stop there.

9. Feeling aggrieved, defendants filed an application under Section 114 CPC and sought review of abovesaid order.

10. Apparently, the abovesaid application was totally misconceived as there was no error apparent on record, necessitating any interference under Section 114 CPC. The defendants could have, at best, moved an application seeking restoration of his abovesaid application which had been dismissed for *non-appearance* and *non-prosecution* but for the reasons best known to respondent, they sought review under Section 114 CPC. Learned Trial Court dismissed the abovesaid application while holding that there was no error apparent.

11. Such orders are under challenge.

12. This Court does not find any illegality or perversity in either of the abovesaid two orders.

13. Since the petitioners were not present on 15.04.2025, despite the fact that the matter was passed over, the only recourse available to the Court was to dismiss the same for *non-appearance* and *non-prosecution*. There is no



2025:DHC:7417



illegality or perversity in the impugned order dated 28.05.2025 as the review, in such a situation, was not maintainable.

14. The defendants should have filed an application seeking restoration of their application, which had been dismissed for *non-appearance* and *non-prosecution* on 15.04.2025 and, therefore, this Court does not find any reason to interfere with the impugned orders, particularly, when there is no illegality or perversity recorded therein.

15. Petition is accordingly dismissed.

16. Pending applications also stand disposed of in aforesaid terms.

17. Learned counsel for petitioner submits that he would file appropriate application seeking restoration. This Court would not make any comment or observation about such belated proposed action and it will be entirely for the learned Trial Court to consider any such application, in accordance with law.

**(MANOJ JAIN)**  
**JUDGE**

**AUGUST 26, 2025/ck/js**