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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 6<sup>th</sup> March, 2025**+ **FAO 52/2025 & CM APPL. 13619/2025****SANJAY SUSHIL BHOSALE** .....Appellant

Through: Mr. Ajay Kumar Pipaniya, Ms. Pallavi Pipaniya, Mr. Gopesh Jindal, Mr. Paras Punyani, Ms. Nikita Garg, Mr. H.P.S. Anand, Mr. Lavish Chhikara, Mr. Deepak Mathur, Ms. Diksha Dharia and Mr. Aayush Rathor, Advs.

versus

**YOGESH GUPTA** ....Respondent

Through: None.

**CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)****CM APPL. 13620/2025 – EXMP.**

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

**FAO 52/2025 & CM APPL. 13619/2025**

3. The appellant/defendant has preferred the present appeal under Order XLIII Rule 1 (d) read with Section 151 of the Code of Civil Procedure, 1908 [“CPC”] assailing impugned order dated 25.01.2025 passed by the learned District Judge-03, Rohini Court, North District, Delhi [“**trial Court**”] whereby his application under Order IX Rule 13 of the CPC for setting aside the *ex-parte* judgment and decree dated



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11.11.2019 has been dismissed.

4. No one appeared for the respondent/plaintiff despite sending advance notice.

5. In a nutshell, the present suit was instituted by the respondent/plaintiff in which due notice of the summons for settlement of issues was served upon the appellant/defendant so much so that he filed written statement. However, he failed to appear during the proceedings and was proceeded *ex-parte* and eventually *ex-parte* judgment-cum-decree dated 11.11.2019 came to be passed.

6. The appellant/defendant moved an application under Order IX Rule 13 of the CPC, whereby it was acknowledged that summons in the suit were served upon him on 14.05.2016 and written statement was filed on his behalf besides the fact that issues were framed on 20.04.2017. It was also acknowledged that the appellant/defendant was proceeded *ex-parte* we.f. 07.08.2019 for non-appearance in the matter.

7. Learned trial Court on consideration of factual narrative and submissions made the following observations:

“4. On perusal of record, it is found that the suit was filed by the plaintiff on 25.04.2016, when summons were issued for 26.09.2016. On 28.09.2016, the applicant / defendant was proceeded *ex-parte* due to non-filing of Vakalatnama. Later on, the said *ex-parte* order was set aside while deciding an application under Order 9 Rule 7 CPC vide order dated 20.03.2017 and the WS of the applicant / defendant was taken on record. Thereafter, the applicant / defendant continuously appeared on 20.04.2017, 16.01.2018, 14.05.2018, 07.08.2018 and was fully participative. Subsequently, the applicant / defendant remained absent before the court on 14.12.2018 and 18.02.2019, when the matter was listed for PE. The court had proceeded the



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applicant / defendant *ex parte* on 07.08.2019 and PW1 was examined and discharged. The application of the applicant / defendant is totally silent upon the reasons for his absence on 14.12.2018 and 18.02.2019. Order 9 Rule 13 CPC clearly stipulates that an *ex-parte* judgment shall be set aside in two eventualities i.e. non-service of summons or any other sufficient cause. In the present case, service of summons is not disputed, therefore, the defendant / applicant is not entitled to a relief under Order 9 Rule 13 CPC. Also, the defendant / applicant has not shown any sufficient cause for his absence on 14.12.2018 and 18.02.2019 before this court. Just because, defendant / applicant is a resident of Maharashtra, the same would not entitle him to a relief under Order 9 Rule 13 CPC, especially, when he himself chose to sleep over his rights and was not diligent. Accordingly, the application of the applicant / defendant under Order 9 Rule 13 CPC is dismissed.”

8. At this juncture, it may also be mentioned that the learned counsel for the appellant/defendant also urged that the appellant/defendant was prevented from appearing in the present matter as he was suffering from mental disability and in this regard relied upon certain medical records placed on the record, which are **Annexure-‘A-3’**.

9. **First things first**, the aforesaid fact that the appellant/defendant was suffering from any kind of mental disability or incapacity and thereby, not enabling him to appear before the Court was neither part of pleadings nor the same was addressed before the Court. It is an entirely new plea and nothing is explained as to what makes the appellant/defendant now capable of understanding the nature and purport of the proceedings against him and moving this application.

10. In summary, learned trial Court has rightly observed that there was service of summons upon the appellant/defendant and he has failed to show any sufficient cause for setting aside the *ex-parte* decree.



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11. Hence, the present appeal is dismissed.
12. The pending application also stands disposed of.

**DHARMESH SHARMA, J.**

**MARCH 06, 2025/***Sadiq*