



2025:DHC:5007



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

% Judgment delivered on: 25.06.2025

+ **RFA 485/2025 & CM APPL. 32692-32695/2025**

SH. GAURAV KHATTARAppellant

versus

SH. VIRENDER AGGARWALRespondent

Advocates who appeared in this case

For the Appellant : Mr. Dishant Sharma & Ms. Aanchal Kumari, Advocates.

For the Respondent : None.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. This is a first Appeal under Section 96 under the Code of Civil Procedure, 1908 ('CPC') against the Judgment and Decree dated 10.06.2016 ('**Impugned Judgement**') passed in Civil Suit No.2626/2016 ('**Suit**') by the Court of District & Sessions Judge, East, Karkardooma Courts, Delhi ('**Trial Court**').

2. By way of the Impugned Judgment, the Suit filed by the Respondent was decreed against the Appellant for ₹5,15,000/- along with interest @12% per annum from the date of filing of Suit till its realization.

3. Along with the present Appeal, the Appellant has also filed CM



APPL. 32694/2025 under Section 5 of the Limitation Act, 1963, for condoning the delay of 3192 days in filing the present Appeal.

FACTUAL BACKGROUND:

4. The Respondent had filed the Suit under Order XXXVII of CPC for recovery of ₹5,15,000/- towards the outstanding dues recoverable from the Appellant against which the Appellant had issued cheques, which were dishonoured. The Respondent had issued a legal notice demanding the payment, however, the Appellant failed to respond.

5. The learned Trial Court issued summons to the Appellant, which was served on the Appellant through his father on 18.05.2016. Despite the service of summons, the Appellant failed to appear and filed leave to defend the Suit.

6. Accordingly, the Suit was decreed by the learned Trial Court *vide* the Impugned Judgment.

7. According to the Appellant, he came to know about the Impugned Judgment only when he received the notice in the Execution Petition bearing No. 64/2023 filed by the Respondent.

8. Thereafter, the Appellant engaged a counsel and filed application under Order XXXVII Rule 4 of CPC before the learned Executing Court, however, the same was dismissed on 01.02.2024. Accordingly, the Appellant filed an application under Order XXXVII Rule 4 of CPC before the learned Trial Court, which was dismissed on 20.01.2025.

9. Being aggrieved by the order dated 20.01.2025, the Appellant has filed the present Appeal.



SUBMISSIONS OF THE APPELLANT:

10. The learned counsel for the Appellant submitted that the Appellant was not served with the summons of the Suit properly and, therefore, the Appellant could not appear and contest the Suit although he had good and sufficient ground to defend the Suit.

11. The learned counsel for the Appellant submitted that the service of summons on an adult member of the Appellant's family under Section 27-32 and Order V Rule 15 of CPC requires that attempt to be made to personally served the summons upon the Appellant and only when the attempts to serve fail, the service on an adult member residing with the Appellant was permissible. In the present case, there was no attempt much less any sufficient attempts were made to serve the summons personally to the Appellant. Thus, the service of summons as shown is not a proper and good service.

12. The learned counsel for the Appellant has submitted that the father of the Appellant was old aged and he never informed the Appellant about the service of the summons of the Suit. After the service of the summons, within two months, the Appellant was forced due to extreme circumstances to withdraw himself from the society, leaving behind his family including his wife and children and went missing since 01.08.2016.

13. It was further submitted that it was only in 2021 that the Appellant was arrested by Crime Branch of Delhi Police and sent to judicial custody on 15.12.2021 and released on bail on 18.01.2022.

14. It was submitted that upon becoming aware of the Impugned Judgment, the Appellant took appropriate steps to set aside the Impugned



Judgment by inadvertently filing the application before the learned Executing Court which was withdrawn with a liberty to file an application before the appropriate Court. Subsequently, the Appellant filed the application under Order XXXVII Rule 4 of CPC before the learned Trial Court which dismissed the said application on 20.01.2025. Accordingly, the Appellant has sought condonation of delay of 3192 days in filing the present Appeal.

15. On merits, the learned counsel for the Appellant has submitted that the invoices relied upon by the Respondent in the Suit were manufactured, false, forged and fabricated. There was no occasion for the Appellant to purchase any goods/material from the Respondent. Hence, the alleged invoices cannot be the basis of the Suit.

16. It was further submitted that the Respondent has not filed any material to substantiate the claim that the goods were delivered to the Appellant in respect of the said invoices. The Respondent has also not filed any statement of account to establish and prove that the Respondent had ever any business dealings with the Appellant.

17. It was submitted that the cheques were given by the Appellant in lieu of a friendly loan of ₹50,000/- provided by the Respondent subject to deposit of blank security cheques. However, the Appellant did not remember the number of cheques given by the Appellant to the Respondent. The Appellant had returned a sum of ₹40,000/- in cash to the Respondent leaving a balance of ₹10,000/-. On making the payment, the Appellant had asked the Respondent to return his blank signed cheques, who assured to return the same on receipt of the balance amount of ₹10,000/-. In the meanwhile, there were serious family issues in the family of the Appellant and as such the



Appellant could not return the remaining amount of ₹10,000/- and even did not ask for return of cheques.

18. It was also submitted that the legal notice dated 06.02.2016 was never served upon the Appellant. The Respondent has not produced any document before the learned Trial Court and had narrated bald, evasive and false contents in the Suit based on hypothetical and false assumptions.

19. It was submitted that the Appellant was not afforded an opportunity to contest the false and frivolous allegations in the Suit of the Respondent. Accordingly, the Appellant prayed for setting aside of the Impugned Judgement.

ANALYSIS AND FINDINGS:

20. At the outset, there is an inordinate delay of 3192 days in filing the present Appeal. The justification provided by the Appellant in the application being CM APPL. 32694/2025 is that the Appellant was not aware about the service of summons as the same was never served upon the Appellant personally, but upon his old aged father, who in turn never informed about the service of summons to the Appellant.

21. The Appellant has submitted that the Appellant became aware about the Impugned Judgement only when he received the notice of the execution petition in July, 2023. Thereafter, the Appellant inadvertently filed an application under Order XXXVII Rule 4 of CPC before the learned Executing Court, which was dismissed due to lack of jurisdiction. The Appellant, thereafter, filed the said application before the learned Trial Court, which was dismissed on 20.01.2025 on the ground of limitation as well as on merits.



22. The Appellant has also stated that he had withdrawn himself from the society from 01.08.2016 until he was arrested on 15.12.2021 and, thereafter, was released on bail on 18.01.2022.

23. The above justification is not sufficient to condone the delay of 3192 days in filing the present Appeal as the summons was duly served in accordance with the provisions of the CPC. Further, the Appellant has not denied the actual service of the summons but has only questioned the manner of service being improper. Therefore, the contention of the Appellant that the summons of the Suit was never served upon the Appellant personally cannot be accepted for setting aside the Impugned Judgement.

24. The alleged withdrawal from the society since 01.08.2016 was subsequent to the passing of the Impugned Judgement on 10.06.2016. Therefore, the justification given for condoning the delay in filing the Appeal on the ground of Appellant withdrawing from the society is also not justifiable.

25. Both the learned Executing Court and the learned Trial Court rightly dismissed the applications under Order XXXVII Rule 5 of CPC on the ground of delay as well as on merits.

26. Even otherwise, the grounds of the present Appeal challenging the Impugned Judgment on merits are not sufficient to interfere with the Impugned Judgment. The Appellant has admitted giving the cheques to the Respondent against a loan, however, has failed to produce any evidence in support of such bald averments. The Appellant has not been vigilant about his rights and failed to appear before the learned Trial Court despite service of summons in accordance with law.

27. The justification given in the Appeal and the application for



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condonation of delay for filing the Appeal are clearly an afterthought and do not inspire confidence. The Appellant has approached this Court with inordinate delay of 3192 days in filing the present Appeal without any sufficient reason for condoning the same.

28. In view of the above, the present Appeal is dismissed on the ground of delay as well as on merits. All the pending application(s) also stand disposed of.

TEJAS KARIA, J
(VACATION JUDGE)

JUNE 25, 2025/ 'A'

Click here to check corrigendum, if any