$~

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

% *Reserved on: 25.03.2026*
Date of decision: 07.05.2026

\+ FAO (COMM) 28/2026 & CM APPL. 6357/2026

MANOGYA AGARWAL .....Appellant

Through: Mr. Devanshu Khandelwal, Adv.

versus

M/S ANEJA REALTY PVT. LTD. .....Respondent

Through: Mr. Arun Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal under Order XLIII(d) of the Civil Procedure Code, 1908 ('CPC') read with Section 13(1A) of the Commercial Courts Act, 2015, assails the Order dated 18.11.2025, passed by the learned Trial Court, whereby the application of the Appellant under Order IX Rule 13 of the CPC was dismissed.

2. Briefly stated, the dispute *inter se* the parties arose out of alleged dealing pertaining to an arrangement of hotel/property on lease, pursuant to which the Respondent instituted Civil Suit (Comm.) No. 3873/2024. *Vide* order dated 28.11.2024, summons were directed to be issued to the Appellant. The case of the Respondent is that service was effected through registered post and placed a tracking report thereof on the record. On 17.01.2025, the learned Trial Court

proceeded *ex-parte* against the Appellant on the basis of the tracking report filed by the Respondent. Subsequently, on 22.03.2025, the learned Trial Court passed an *ex-parte* Judgment and Decree in favour of the Respondent.

3. It is the case of the Appellant that he acquired knowledge of the *ex-parte* decree only on 11.04.2025, upon receiving communication from the Respondent's counsel *via* WhatsApp, and he was never served with any summons/notice.

4. Upon gaining such knowledge, the Appellant filed an application under Order IX Rule 13 CPC on 03.05.2025 along with a delay condonation application. In the affidavit filed by the appellant with the application, he claimed that the summons were not tendered to him by the Postal Department and the tracking report also does not mention the name of the Appellant, thus, asserting that no service of summons had been effected. The learned Trial Court condoned the delay in filing the said recall application. However, the said application was subsequently dismissed by the learned Trial Court *vide* Impugned Order dated 18.11.2025. Aggrieved thereby, the Appellant has preferred the present appeal challenging the Order dated 18.11.2025.

5. We have heard the learned counsel for the parties and perused the material placed on record.

6. By way of the Impugned Order, the learned Trial Court, while dismissing the application of the Appellant under Order IX Rule 13 of the CPC, held that the Appellant was duly served with summons through Registered Post on 09.12.2024 as evidenced by the tracking

report furnished by the Respondent, which indicated that the Appellant had knowledge of the proceedings, thus no sufficient ground was made out for setting aside of the *ex parte* decree.

7. The Appellant submits that the alleged service in the present case is purportedly based on "refusal". However, the report of the postal official is wholly vague and deficient, as it merely records the word "refusal" without specifying the identity of the person to whom the summons were allegedly tendered or who is stated to have refused the same. The Appellant, on affidavit, has stated that no summons were ever tendered to him, and he never refused service of any summons or notice. It is further submitted that the Appellant had no knowledge whatsoever of the date of hearing and was thus prevented by sufficient cause from appearing before the learned Trial Court when the suit was proceeded with *ex parte.*

8. The question, thus, arises for consideration before this Court is whether service upon the Appellant is sufficient as per law.

9. It is well settled that once the proof of service is rebutted, the burden of proof shifts on the other party to prove the said proof of service with cogent reasons by adducing evidence. In this regard, reference may be made to ***Parimal v. Veena, (2011) 3 SCC 545***, wherein the Supreme Court authoritatively expounded upon the presumption of service of summons and the nature of the burden required to rebut the same. The relevant paragraphs are extracted as below:

> *"**Presumption of service by registered post and burden of proof***
> *17. This Court after considering a large number of its earlier judgments in Greater Mohali Area Development Authority v.*

Manju Jain [(2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639 : AIR 2010 SC 3817] held that in view of the provisions of Section 114 Illustration (f) of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897 there is a presumption that the addressee has received the letter sent by registered post. However, the presumption is rebuttable on a consideration of evidence of impeccable character. A similar view has been reiterated by this Court in Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra [(2010) 13 SCC 657 : JT (2010) 12 SC 287] .

18. In Gujarat Electricity Board v. Atmaram SungomalPoshani [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10 ATC 396 : AIR 1989 SC 1433] this Court held as under : (SCC pp. 611-12, para 8)

> *"8. There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same.* ***No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same.*** *The burden to rebut the presumption lies on the party, challenging the factum of service."*
>
> *(emphasis added)*

19. ***The provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour.*** *Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue.*

(emphasis supplied)

10. In the aforesaid backdrop, it is evident that an endorsement of refusal may give rise to deemed service, however, such a presumption is not absolute and remains open to rebuttal and once rebutted, *onus*

shifts on the party asserting such service of summons to prove it with cogent evidence.

11. In the present case, the entire case of the Respondent rests upon a tracking report and a purported postal endorsement of “refusal”. However, the Appellant has, on oath, categorically denied having been served with summons and further asserted that the tracking report neither bears his name nor evidences actual tender of the summons to him. Such a sworn and specific denial constitutes a credible rebuttal and cannot be brushed aside lightly. Once such a denial is made, the burden shifts upon the Respondent to establish due service by leading cogent evidence demonstrating actual tender of summons to the Appellant.

12. No endeavour has been made by the Respondent to examine the concerned postal official or to produce any material that the summons were in fact tendered to the Appellant. The absence of examination of the postal official, particularly when the service is specifically disputed on oath, assumes credible significance and renders the finding of due service legally unsustainable.

13. It is further imperative to note that the learned Trial Court has condoned the delay in filing the application under Order IX Rule 13 of the CPC by accepting that the delay is caused in acquiring the certified copies, wherein the date of knowledge as claimed by the Appellant was 11.04.2025. This finding, in effect, acknowledges that the Appellant did not have prior notice of the proceedings and of the next date of hearing, thereby creating sufficient cause. Once the learned Trial Court accepted 11.04.2025 as the date of knowledge for the

purposes of limitation, it could not, without cogent reconciliation, simultaneously hold that the Appellant had prior due service. The two findings are mutually destructive and render the impugned order legally unsustainable.

14. In view of the foregoing, this Court is of the considered opinion that the learned Trial Court erred in holding that the Appellant was duly served and in consequently refusing to set aside the *ex-parte* decree.

15. Accordingly, the Impugned Order dated 18.11.2025 cannot be sustained and is, hereby, set aside. The present appeal is allowed. The application filed under Order IX Rule 13 of the CPC is allowed, and the *ex parte* judgment and decree dated 22.03.2025, is also set aside.

16. The suit is restored to its original position before the learned Trial Court, which shall proceed in accordance with law.

17. The parties shall appear before the learned Trial Court on 20.05.2026.

18. Pending application(s), if any, also stands disposed of.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

MAY 07, 2026/*kp/tr*