



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

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*Reserved on 22<sup>nd</sup> May, 2026  
Pronounced on: 05<sup>th</sup> June, 2026*

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**RSA 209/2024, CM APPL. 71171/2024 & CM APPL. 71173/2024**

**ARTI SHARMA @ ARTI**

D/o Sh. Het Ram  
R/o 316-B, First Floor,  
Pocket M & N, Janta Flats,  
Sarita Vihar, New Delhi.

.....Appellant

Through: Mr. Ayaz Ahmed and Mr. Sameer  
Khan, Advocates with Appellant in  
person.

versus

**SMT. KANTA KAME**

W/o Sh. Ashok Kame  
R/o D-52, Pocket-J DDA Flats,  
Sheikh Sarai,  
New Delhi.

.....Respondent

Through: Mr. Krishnakumar R. S., Advocate  
with Respondent in person.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. **Regular Second Appeal** under Section 100 read with Section 151 Code of Civil Procedure, 1908 (CPC) has been filed against the Judgment dated 02.08.2024 whereby the learned District Judge, in First regular Appeal has upheld the ex-parte Judgment and Decree dated 01.03.2023, of the learned Civil Judge, while dismissing the challenge to the Application under Order 9 Rule 13 CPC, in setting aside the Judgement of the learned Civil Judge.



2. The Respondent/Plaintiff instituted a *Civil Suit bearing CS No. 947/2019 seeking eviction of the Defendant/Appellant and recovery of arrears of rent.*

3. **Briefly stated**, the case of the Respondent/Plaintiff was that she was the owner of property bearing No. 316-B, Pocket M & N, Janta Flats, Sarita Vihar (*hereinafter referred to as suit property*), and that the Appellant along with Defendant No.2 (her husband, who has not been impleaded in this Appeal) had approached her for taking the premises on rent. Pursuant thereto, a Rent Agreement dated 14.06.2016 was executed for the period from 12.06.2016 to 11.06.2017, at a monthly rent of Rs. 7,000/-. The rent, after June, 2018, was enhanced to Rs. 8,500/- per month, in consultation with the husband of the Respondent/Plaintiff. The tenants continued to pay the rent till 11.06.2019, whereafter they allegedly defaulted in payment of rent. It was also averred that no fresh Rent Agreement was executed after expiry of the initial tenancy Agreement.

4. It was further stated by the Plaintiff that the Defendants had been irregular in payment of rent and, on several occasions, had tendered rent for two months, at a time. The Plaintiff further asserted that the last payment of Rs. 17,800/- was received on 18.07.2019 towards rent, for the period from 12.04.2019 to 11.06.2019, and that thereafter, no rent was paid by the Defendants.

5. The Plaintiff also asserted that the electricity charges were liable to be paid by the Defendants as per the consumption, for which a separate meter was also installed in the Suit property. The Defendants had initially checked the previous meter reading and agreed to pay the charges, as per the Agreement.



6. The Plaintiff further submitted that the rent payable by the Defendants was being remitted through NEFT, into the bank account of Shri Ashok Kumar Kame, husband of the Plaintiff, who maintained proper records and accounts, pertaining to the rent received from the Defendants.
7. On 10.07.2019, Shri Ashok Kumar Kame visited the Defendants, for the purpose of inspecting the building. During the course of his visit, he kept his bag on the Second Floor of the building and proceeded to the roof. However, upon returning, he was shocked to discover that his bag had been tampered with and several important documents, including the Rent Agreement, were missing therefrom.
8. Shri Ashok Kumar Kame immediately confronted Defendant No.1 and Defendant No.2 regarding the missing documents; however, both denied having any knowledge thereof. Thereafter, the Plaintiff approached the concerned Police Station to lodge a complaint, but was advised to submit the same through the online portal. Consequently, Shri Ashok Kumar Kame lodged an online complaint, regarding the loss of the aforesaid documents.
9. The Plaintiff *bona fide* required the Suit premises for the residential use and occupation of her son, whose marriage was scheduled to take place within a period of two months. Despite repeated requests, the Defendants failed and neglected to vacate the Suit premises.
10. Consequently, the Plaintiff was constrained to issue a Legal Notice dated 06.08.2019 to the Defendants, thereby terminating the Rent Agreement and calling upon them to hand over the vacant and peaceful possession of the Suit premises. However, despite service of the said Legal Notice, the Defendants neither complied with the demands made therein nor vacated the Suit premises.



11. Accordingly, the *Plaintiff* filed the *Suit No. 947/19*, seeking *possession of the Suit property, recovery of arrears of rent amounting to Rs.34,000/- calculated @ Rs.8,500/- per month for the period from 12.06.2019 to 11.10.2019*, along with future rent/damages till the Defendants vacate and hand over the possession of the Suit premises.

12. The summons of the Suit were issued to the Defendants, but they were received back with the Report “*Defendants were out of station*”. The service was effected upon Defendant No.1 through WhatsApp, but Defendant No.2 had blocked the number of the Plaintiff. Since the service had been effected upon the husband of Defendant No.1, she was deemed to have been served. *The summons were also affixed outside the premises of the Defendants, vide Report dated 18.12.2019.*

13. The Defendants, thereafter failed to appear and were proceeded ex-parte.

14. The Plaintiff in support of her case, *examined herself as PW1* and tendered her evidence by way of Affidavit, Ex.PW1/1. She proved the documents of ownership, water bills, electricity bills, Rent Agreement dated 14.06.2016, Statement of Account, online Complaint and the Legal Notice as Ex. PW1/A to 1/G.

15. The *learned ASCJ* on appreciation of the evidence, placed reliance upon the ownership documents Ex. PW1/A, the Rent Agreement dated 14.06.2016 Ex. PW1/C, and the Tenant Verification Report dated 11.06.2016 Ex. PW1/E, to conclude *that the Defendants were inducted as tenants in the suit property and that the last paid rent was Rs. 8,500/- per month.* The Defendants had failed to vacate the premises, despite service of Legal Notice dated 06.08.2019 Ex.PW1/7. *Consequently, the Suit of the*



*Plaintiff was decreed for Possession, Recovery of Rent @ Rs.8,500/- per month for the period 12.06.2019 to 11.10.2019 and further Mesne Profits were granted @ Rs.9,000/- per month along with interest @ 6% per annum till the premises were vacated.*

**16.** Aggrieved by the ex-parte Judgment and Decree, *Defendant No. 1* filed an **Application under Order 9 Rule 13 CPC**, seeking setting aside of the ex-parte proceedings. However, the *learned ASCJ* held that the summons had been duly served upon Defendant No. 1 and that she had failed to appear despite such service, and dismissed the said Application, **vide Order dated 01.03.2023**.

**17.** Thereafter, the Appellant/Defendant No. 1, Arti, preferred an Appeal before the *learned District Judge* assailing both the Order dated 01.03.2023 dismissing her Application under Order 9 Rule 13 of the CPC and the ex-parte Judgment and Decree dated 01.10.2021. The learned District Judge, however, found no merit in the Appeal to challenge to the Order dated 01.03.2023, dismissing the Application under Order IX Rule 13 CPC.

**18.** Learned. *District Judge did not find any merit* in the First Regular Appeal challenging the ex-parte Judgment and Decree dated 01.10.2021 passed by the learned ASCJ, and the same was **affirmed, vide Judgement dated 02.08.2024**.

**19.** Aggrieved, the present *Regular Second Appeal* has been preferred to challenge the Judgement dated 02.08.2024, of Ld. District Judge, upholding the ex-parte Judgment and Decree dated 01.10.2021.

**20.** The **grounds of challenge** are that the Suit premises were located in District South-East, while the Suit has been decided by the learned Judge of South District. There was no *territorial jurisdiction with the learned ASCJ*



*as well as with the learned District Judge, South* to entertain the Suit and on this ground itself, the Judgment is liable to be set aside.

**21.** It is further contended that the particulars of the Appellant/Defendant No. 1, have been incorrectly described in the Suit proceedings. According to the Appellant, *her correct name is Arti Tiwari*, whereas in the suit she has been described as *Ms. Arti Sharma @ Arti*. It is asserted that she has never been known by the name Arti Sharma and has, since her childhood, been known and identified as *Arti Tiwari*. In support of this contention, the Appellant has placed on record a copy of her Aadhaar Card, reflecting her name as Arti Tiwari.

**22.** It was further contended that the Suit instituted by the Plaintiff, was a collusive proceeding between her and Defendant No. 2, Alok Thakur @ Alok. The Defendant No. 2 had been erroneously described as her husband, whereas she has no connection whatsoever, with him and he is not her husband.

**23.** It was further submitted that *Defendant No. 2, Alok Thakur @ Alok was never a tenant in the suit property and had never resided at the suit premises*. According to the Appellant, she is a married woman and the name of her husband is Manoj Pandey, although certain matrimonial disputes had arisen between them. In support of her contentions, the Appellant placed reliance upon a copy of her Ration Card, wherein the name of her husband, is recorded as Het Ram Tiwari.

**24.** It is further contended that no valid service of summons, was ever effected upon the Appellant. No summons were affixed either in her name, namely Arti Tiwari, or by reference to her husband, Manoj Pandey. Consequently, the alleged service by affixation, cannot be treated as due



service upon the Appellant. It is further submitted that no summons of the Suit were ever served upon her through WhatsApp or by any other mode, prescribed under law. Accordingly, the Appellant remained unaware of the pendency of the Suit proceedings.

**25.** The Appellant submits that she first became aware of the ex-parte Judgment and Decree dated 01.10.2021, only upon noticing the summons issued in the Execution proceedings, affixed on the wall of the premises. Thereafter, she promptly engaged counsel and took steps to challenge the ex-parte decree. It is contended that her non-appearance before the learned Trial Court, was neither deliberate nor wilful, but was solely on account of the absence of due service of summons.

**26.** In these circumstances, it is submitted that the impugned Order dated 01.03.2023, whereby the Application under Order 9 Rule 13 read with Section 151 CPC has been dismissed, be set aside. *Furthermore, the ex-parte Judgment and Decree dated 01.10.2021 be also set aside and the Appellant be granted an opportunity to contest the Suit on merits.*

**27.** The *Written Submissions were filed on behalf of the Respondent*, wherein it was explained that it is well settled as has been held in the case of Pathumma vs. Kuntalan Kutty (1981) 3 SCC 589 and also in K.P. Ranga Rao vs. K.V. Venkatesham (2015) 13 SCC 514, that the objection in regard to the **territorial jurisdiction**, has to be taken at the earliest opportunity and cannot be raised at the stage of Revision or the Appellate stage. Under Section 21(1) CPC, no objection can be taken as to the place of suing, unless the three conditions are satisfied, namely (i) *the objection was taken in the Court of first instance;* (ii) *it was taken at the earliest possible opportunity*



*and in cases where issues are settled at or before the settlement of issues; and (iii) there has been a consequent failure of justice.*

**28.** In the present case, despite having due notice of the Suit proceedings, the Appellant consciously failed to enter appearance and contest the matter, by filing her defence. Subsequently, the Application preferred by her under Order 9 Rule 13 CPC seeking setting aside of the ex-parte Judgment and Decree, also was dismissed. The learned Court, upon appreciation of the material on record, did not accept the Appellant's contention that she had never been served with the summons of the Suit.

**29.** It was found that the Process Server had personally visited the address of the Appellant for effecting service, and upon not finding her available at the premises, had duly affixed the summons on the door of the property, in accordance with law. Furthermore, the record revealed that the Appellant had appeared before the learned Executing Court through counsel on 20.09.2022 and on subsequent dates. In these circumstances, it stood established that the Appellant had been duly served with the summons of the Suit. Consequently, the learned Court rightly dismissed the Application under Order 9 Rule 13 CPC, finding no sufficient ground for setting aside the ex-parte Judgment and Decree.

**30.** It was further submitted that the Appellant had not approached the Court *with clean hands*. She has grossly misrepresented and concealed important facts from the Court. By virtue of the Order of Eviction dated 01.10.2021, *the physical possession of the Suit property was handed over to the Respondent on 16.08.2022, after lengthy execution proceedings.*

**31.** The husband of the Respondent took the formal possession and secured the premises with a lock and key. After a few days when the



husband revisited the place, to his horror and shock, he found that the Appellant in gross violation of the Orders of the Courts, had broken open the locked premises, usurping the peaceful physical possession of the Respondent and had gain entry by trespass.

**32.** Moreover, the Appellant has continued to remain in unauthorized and illegal occupation of the Suit premises without payment of any rent or occupation charges. In view of her unlawful possession, the Respondent's husband approached the police authorities by calling the emergency helpline 112, pursuant to which an FIR was registered against the Appellant, for the offence of criminal trespass. Thereafter, the learned Magistrate took cognizance of the matter, and the criminal proceedings arising therefrom, are presently pending adjudication.

**33.** It was further submitted that the Appellant has consistently made false statements and misrepresented facts, before various Courts. It was contended that despite having unlawfully entered and continued to occupy the suit premises, the Appellant remains in unauthorized possession thereof without paying any rent or occupation charges. *It was further asserted that, as of the end of January 2025, the Appellant had accumulated rental arrears amounting to approximately Rs. 6,00,000/-.*

**34.** It was further submitted that the Appellant has recently acquired a property bearing No. 318-B, Pocket M, Sarita Vihar, New Delhi, comprising of four floors, from which she is allegedly earning rental income of approximately Rs. 50,000/- per month.

**35.** It was pointed out that in the documents pertaining to the said property, *the Appellant has described herself as the daughter of Het Ram Tiwari.* It was further contended that, while in certain documents she has



represented herself as the daughter of Het Ram Tiwari, in the Rent Agreement executed with the Respondent in the year 2016 she had represented herself, as the wife of Alok Kumar.

**36.** It was further stated that it is neither the responsibility of the Respondent nor of any other person, to ascertain the true identity or status of the Appellant, particularly when she had chosen to describe her relationship and personal particulars, differently in different documents. According to the Respondent, such inconsistent representations amount to deliberate misrepresentation and are reflective of the Appellant's conduct throughout the proceedings.

**37.** It was further submitted that the Appellant has repeatedly acted in disregard of the law and is liable to be proceeded against, in accordance with law. In view of the foregoing, it was submitted that the present Appeal is devoid of merit and deserves to be dismissed.

**Submissions heard and record perused.**

**38.** A *preliminary objection* has been taken by the Appellant that the Suit property was located in Sarita Vihar, which fell in the territorial jurisdiction of District South-East, while the Suit has been entertained by the learned Judge in District South. *Therefore, the Judgment is without jurisdiction and is liable to be set aside.*

**39.** It may be noted that this objection of *territorial jurisdiction* was taken by the Appellant, only at the stage of first Appeal before the learned District Judge. Learned counsel for the Respondent has rightly referred to Section 21(c) CPC, which provides that this objection would be accepted, only if it is shown to have been *taken in the first instance and has resulted in prejudice to the parties.*



40. It has been held in the case of *Pathumma vs Kuntalan Kutty* (supra) and also in *K.P. Ranga Rao vs K.V. Venkatesham* (supra) that the objection to the territorial jurisdiction has to be taken not at the Execution or at the Appellate stage.

41. In the present case, even though the Suit was tried in the District South, there is nothing to show that the Appellant had been prejudiced in any manner. It has been held in the case of *Pathumma vs Kuntalan Kutty* (supra) and also in *K.P. Ranga Rao vs K.V. Venkatesham* (supra) that the objection to the territorial jurisdiction has to be taken not at the Execution or at the Appellate stage.

42. In the present case, the District Judge has duly considered this contention and noted that this objection to the District being South-East, was never raised by the Appellant even in her Application under Order 9 Rule 13 CPC. Moreover, *vide* Administrative Order dated 19.02.2013, it had been directed by this Court that the fresh cases or matters shall be presented in the Courts having jurisdiction. If learned counsel was aware that an ex-parte Judgment had been passed without jurisdiction, he should have filed an Application/Appeal, in the correct jurisdiction. However, no such steps were taken on behalf of the Appellant. *Therefore, the contention of the Judgment being bad on account of lack of territorial jurisdiction, has been rightly rejected by the learned District Judge.*

43. Another objection taken was that the Appellant was never served with the summons of the Suit. However, this aspect had been duly considered in the Application under OIX Rule 13 CPC, and it was held that the Appellant was duly served with the Summons. The Appeal against this Order, had also



been dismissed by Ld. District Judge, which has attained finality and cannot be a ground for consideration, in this Appeal.

**44.** It may however, be noted that despite due service through pasting, she had failed to participate in the proceedings and was proceeded ex-parte. Pertinently, the summons for Execution were served similarly by pasting, which she admits to have received and had thereafter, appeared in the Execution proceedings.

**45.** The *first main objection on merits*, which has been taken by the Appellant is that Defendant No.2 Alok Thakur @ Alok was not her husband and he had no concern with the tenanted premises. She claimed that the name of her husband was Manoj Pandey and she had no relation with Alok Thakur @ Alok.

**46.** However, the perusal of the Bank Passbook reflects that there were multiple entries through NEFT towards payment of rent, into the Account of the Plaintiff/Respondent from the Account of one Alok, which establishes the connection of Alok Thakur with the tenancy. Even if the contention of the Appellant is accepted that Alok Thakur was not her husband, but as rightly contended by the Respondent, it was not her duty to verify the relationship of Appellant with Alok Thakur or to have verified their documents of marriage. It was the Appellant who approached along with Alok Thakur and presented him as her husband, which was reasonably accepted by the Respondent.

**47.** Whatever may be the relationship of the Appellant with Alok Thakur, what was significant was that she alone had entered into the Rent Agreement with the Respondent, vide Agreement dated 14.06.2016 Ex.PW1/C. Not only this, there is also Tenant Verification Form Ex.PW1/E, wherein the



particulars of the tenant i.e. the Appellant Arti, wife of Alok Kumar had been filled in, on the basis of the information given by the Appellant.

**48.** Another contention raised by the Appellant is that her *correct name is Arti Tiwari*, whereas in the Suit, she has been wrongly described as *Ms. Arti Sharma @ Arti*. However, whether Appellant was known as Arti Sharma or as Arti Tiwari, such alleged mis- description does not take away the truth of she actually being the person who entered into the Rent Agreement with the Respondent and had occupied the premises as a tenant. Her status in the Suit property as a tenant, is fully established.

**49.** The Rent initially @ Rs.7,000/-, thereafter Rs.8,000/- and finally @ Rs.8,500/-, stands fully corroborated from the Passbook of Shri Ashok Kumar Kame Ex.PW1/D, to whom the Rent was being paid by the Appellant, on behalf of the Respondent. *The documents overwhelmingly, establish the relationship of landlord-tenant and also that the rent was more than Rs.3,500/- per month.*

**50.** The most bizarre fact which needs to be mentioned, is that in Execution proceedings, the Appellant had been evicted from the premises by the Orders of the Court dated 01.10.2021 **and the physical possession was handed over to the Respondent on 16.08.2022.** However, the woes of the Respondent did not come to an end, as the Appellant thereafter, entered into the Suit premises. According to the Plaintiff by breaking open the lock of the Respondent.

**51.** The Appellant during the course of arguments has not denied that despite the possession having been taken by the Plaintiff through Bailiff, she re-entered the premises. However, her explanation is that she found the premises lying unlocked, and thus, re-entered into the premises.



52. It clearly reflects the trespass made by the Appellant into the property and her continued possession till date without paying a penny, is illegal. She has no right to continue in the premises, especially after an Eviction Decree which had been duly executed and she was evicted from the premises. Such conduct of the Appellant who has re-entered in the premises without any Orders of the Court or without any legal basis, speaks volume about her illegal conduct.

53. From the overwhelming evidence, it may be concluded that the Appellant had entered into the premises as a tenant with a rate of rent of more than Rs.3,500/-. She has no right, title to continue in the Suit premises, once the tenancy got terminated.

54. *There is no infirmity in the Judgment of the learned ASCJ which has been rightly upheld by the learned District Judge.* Moreover, this is Second Regular Appeal, wherein there are no substantial question of law, have been stated. The challenge is purely on facts, which cannot be re-appreciated in second Appeal.

55. *There is no merit in the present Appeal, which is hereby, dismissed.*

56. The Appeal along with the pending Applications stand disposed of, accordingly.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 05, 2026**

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