



\$~43

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

+ CRL.A. 541/2025

PRANAV SHARMA
S/o Vinod Sharma
R/o Villa No. V8, 9/2
Land II, Jaypee Greens
Greater Noida,
Gautam Buddh Nagar
Uttar Pradesh

.....Appellant

Through: Mr. Rajesh Baweja, Ms. Poonam &
Ms. Anjali Gupta, Advocates

Versus

1. BHAVYA SHARMA
S/o Rajan Sharma,
R/O Villa No. V8.9/2,
Land II, Jaypee Greens,
Greater Noida,
Gautam Buddh Nagar,
Uttar Pradesh-201306
2. SH. RAVI RANJAN
Advocate
C/O 123/11, Supreme Enclave, Mayurvihar,
Phase-1, New Delhi-110091
3. SH. KUNDAN KUMAR
S/O Sh. Vinod Singh,
C/O 123/11, Supreme Enclave, Mayur Vihar,
New Delhi

.....Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER



25.04.2025

1. Criminal Appeal under Section 380 read with Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 and Section 341 Cr.P.C. has been filed against the Order dated 31.03.2024 and Order dated 20.02.2025 of the learned Additional District Judge *dismissing* the Application under Section 340 Cr.P.C. filed by the Petitioner.
2. ***The facts in brief***, are that the Petitioner (Plaintiff) had filed a Civil Suit for recovery of Rs.10 Lakhs against the Respondent No. 1 (Defendant) under Order XXXVII CPC. The Respondent was duly served with Summons for Appearance and he filed Memo of Appearance on 12.05.2023. Thereafter, the Summons for Judgment were served upon the Respondent which were received by his wife on 05.07.2023. The Respondent No. 1 filed Leave to Defend Application under Order XXXVII Rule 3(7) Code of Civil Procedure ('CPC') along with an Application for Condonation Of Delay, duly supported with Affidavit on 01.08.2023. The reason for delay essentially was given that his wife due to oversight, failed to inform and hand over the summons to him, which was done only on 23.07.2023. There was a delay of 16 days in filing the Leave to Defend Application.
3. The Petitioner (who was Plaintiff in Civil Suit) filed an Application under Section 340 Cr.P.C. wherein he submitted that Respondent had failed to serve him with a complete copy of Application for Leave to Defend and the supporting Affidavits.
4. According to Petitioner (Plaintiff), the purported Affidavits of Respondent No.1/ Defendants were without proper attestation/ signatures of the Oath Commissioner and the Number entry. The Affidavits were filed



with forged and fabricated attestation. The law requires the Leave to Defend Application to be on oath; thus, the purported Leave to Defend Application could not be deemed to be a valid Application and certainly not within the limitation period.

5. It was stated that the Clerk of the Counsel for Petitioner received the Copy of Application for Leave to Defend on 01.08.2023 at about 01:30 PM. He noticed certain discrepancies in the Leave to Defend Application and its accompanied Affidavits, as the Leave to Defend Application was neither signed nor attested by the Oath Commissioner nor did it bear the signatures of Respondent No.1/Defendant. It had signatures only of Mr.Ravi Ranjan, Advocate for the Respondent No.1/ Defendant, which were in original.

6. The following discrepancies in the Application for Leave to Defend Application and Condonation Application and the Supporting Affidavit were noted:-

- a) *the stamp of the Oath Commissioner was blanks of details;*
- b) *The stamps did not bear the signature of the oath commissioner;*
- c) *There was no serial number on the stamp;*
- d) *No signatures of the Respondent was there;*
- e) *Only the signature of the counsel identifying the deponent ;*
- f) *above the identification stamp was there.*

7. It is submitted that though the stamp of the Oath Commissioner had been put on the Application but it did have the signatures of the Oath Commissioner, thereby, implying that the stamp was put even prior to it



being signed by the Oath Commissioner. It is submitted that Respondent No.2 gave a false Affidavit dated 10.10.2023 on oath.

8. Further, the admission of the Oath Commissioner that the writing was not hers and the details of the same were not filled by her, clearly makes out a case under Section 340 Cr.P.C.

9. This forged Affidavits supporting the Leave to Defend Application as well as the Condonation of Delay Application, has resulted in harm to the Petitioner, as the Leave to Defend Application, which was filed beyond the period of Limitation, without proper attestation, was no filing and should have been overlooked and ignored in the trial under Section XXXVII CPC.

10. However, the Application filed by the Petitioner has been erroneously dismissed by the learned ADJ *vide* Order dated 20.02.2025.

11. ***Being aggrieved, the present Petition has been filed to challenge the impugned Order dated 20.02.2025 on the ground*** that the forged and fabricated documents be not permitted to be made part of the judicial proceedings, in order to ensure fairness of trial and to maintain sanctity of judicial proceedings. Further, the facts clearly establish the forged and fabricated documents have been permitted to be taken on record which has resulted in grave miscarriage of justice. The due process has not been followed and thus, the impugned Order deserves to be set aside being manifestly erroneous and illegal.

12. ***Submission heard and record perused.***

13. Essentially the grounds on which the forgery of the attestation of the Affidavits dated 31.07.2023 is claimed is that the copies supplied to the Counsel for the Petitioner were having a blank stamp with no details filled



in, while the one filed in the Court had the details and the stamp and the signatures of the Oath Commissioner. It has been sufficiently explained on behalf of the Respondent No.1 that because of the urgency of filing the Leave to Defend which was already delayed, the Clerk of the Counsel because of the rush, had put the stamp of the Oath Commissioner, which is admittedly genuine.

14. Thereafter, in a rush to supply a copy of the same to the Petitioner, the same was made available to the Counsel for the Petitioner, though the attestation was done on the original Leave to Defend / Affidavits, which subsequently were stamped and filed in the Court. Merely because the copies supplied to the Counsel for the Petitioner did not have the details of the stamp or the signatures of the Oath Commissioner, would not make it a case of forgery, especially when the documents submitted in the Court had the details filled in and was duly stamped along with signatures of the Oath Commissioner.

15. The *second contention* raised by the Counsel for the Petitioner is that the Oath Commissioner has admitted that the details on the affidavit have not been filled in by her but by the Clerk of the Counsel.

16. The Statement of the Oath Commissioner was recorded in the Court on 28.09.2024 wherein she admitted that the stamp of the Oath Commissioner belonged to her, but asserted that the details filled therein were not in her handwriting but by the Clerk for the Counsel for the Respondent. She also produced her Register and stated that as per the Register entry on 31.07.2023 at Serial No. 6 & 7, wherein the details of the Affidavits were made, contains the signatures and mobile number of Bhavya



Sharma/ Respondent No. 1, though she was unable to state if those entries were in respect of Affidavits of Bhavya Sharma or any other document.

17. The details may have been filled by the Clerk of the Counsel but there is no denial that the attestation was carried out on the said date i.e. 31.07.2023 by her. The original Register of the Oath Commissioner was produced wherein admittedly there were entries at Serial No. 6 & 7 mentioning the attestation of the documents and also had the signatures of the Respondent- Bhavya Sharma.

18. The Register further corroborates that there was due attestation done by the Oath Commissioner and the Affidavits of the Leave to Defend Application and the Affidavits supporting the Application for Condonation of Delay. There is nothing to reflect that there was any kind of forgery in the attestation done by the Oath Commissioner.

19. So far as submission of learned Counsel for the Petitioner that by taking such Leave to Defend and Condonation of Delay Applications along with their Affidavits with forged attestation on record, has resulted in grave harm to the Petitioner, inasmuch as Leave to Defend Application has been allowed, is concerned; it has already been noted above that there is no *prima facie* forgery made out. Furthermore, allowing Leave to Defend Application did not cause harm to the Petitioner, for it is the legal right of the Respondent/Defendant to be able to put defence in case the law empowers him/her.

20. In the case of *K T M S Mohd. and Another Vs. Union of India* (1992) 3 SCC 178, it was observed that there is a word of caution inbuilt under Section 340 Cr.P.C. itself that the action to be taken should be expedient in



the interest of justice and the power given by this Section 340 of the Code should be used with utmost care and after due consideration.

21. In K. Karunakaran Vs. T. V. EacharaWarrier(1978) 1 SCC 18 it was observed that after hearing Application under Section 340 Cr.P.C., the Court has to come to a conclusion that a prima facie case has been made out under Section 193 Cr.P.C. and it is expected in the interest of justice to lay a Complaint before appropriate court.

22. In the present case, neither any *prima facie* case is made out nor is there any cause of action to permit or direct the proceedings under Section 340 Cr.P.C.

23. The Application under Section 340 Cr.P.C. has rightly been rejected by the learned Trial Court.

24. There is no merit in the present Petition, which is hereby dismissed. The pending Applications are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 25, 2025

r