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

Date of decision: 11<sup>th</sup> MARCH, 2026

IN THE MATTER OF:

+ **CS(OS) 601/2019 & I.A. 12352/2020, I.A. 6811/2022**

**JAGDISH KUMAR DHAMIJA & ANR** .....Plaintiffs

Through: Mr. Ashish Upadhayay, Advocate.

versus

**DARSHAN LAL & ANR** .....Defendants

Through: Mr. Naveen Kumar Chaudhary, Mr. Sahdev Singh, Mr. Virat Saharan, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

**I.A. 8265/2024**

1. This is an application on behalf of the Defendants under Order IX Rule VII of the CPC for setting aside Order 28.10.2022 passed by this Court setting the Defendant *ex parte*.

2. The instant suit is one for recovery of Rs.1,25,00,000/- along with interest @ 24% and damages for the sum of Rs.80,00,000/-. It is the case of the Plaintiff that the Plaintiff entered into an Agreement to Sell dated 21.07.2016 with the Defendants for sale of Second Floor (duly complete and finished in all respects) with 22.5 stilt area (undivided) of the property bearing No.12, Block 7 (Commonly known as 7/12), situated at Kalkaji Extension, New Delhi-110019 for a total sale consideration of



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Rs.2,00,00,000/-.

3. The case of the Plaintiff is that the Plaintiff entered into a Collaboration Agreement dated 15.12.2015 with the erstwhile owner of Plot No.7/12, Kalkaji Extension, New Delhi-110019, whereby entire Second Floor, Third Floor with terrace, 45% of entire stilt area was allocated to the Defendants.

4. Summons were issued in the suit on 21.11.2019. Defendant was served on 08.01.2020. Written statement was filed on 14.08.2020 with an application for condonation of delay with another application under Section 8 of the Arbitration & Conciliation Act, 1996.

5. On 29.09.2020, the case was adjourned by the learned Joint Registrar stating that the application for condonation of delay and application under Section 8 of the Arbitration & Conciliation Act, 1996 are not on record. Thereafter, the matter came up for hearing on 21.12.2020, on which date, adjournment was sought on behalf of the Defendants on the ground of ill health of the family member of learned Counsel for the Defendants and the matter was adjourned to 08.01.2021 wherein again there was no appearance on behalf of the Defendants.

6. The order sheets indicate that after 13.09.2021, there has been no appearance on behalf of the Defendants on 03.12.2021, 07.03.2022, 04.05.2022, 25.05.2022, 24.08.2022 and 28.10.2022. Material on record indicates that despite court notice being served to the learned Counsel for the Defendant, they were unserved on the ground that the premises were found locked.

7. On 28.10.2022, noticing that there was no appearance on behalf of the Defendant for many hearings, the Defendant was set *ex parte*.



8. The present application to set aside the Order dated 28.10.2022 has been filed by the Defendants on 03.04.2024. It is pertinent to mention that after 28.10.2022, there have been repeated hearings on 16.03.2023, 05.07.2023, 09.08.2023, 06.10.2023, 24.01.2024 wherein there is no appearance on behalf of the Defendants.

9. When the matter was placed for *ex parte* evidence, an appearance was made on behalf of the Defendants stating that an application has been filed under Order IX Rule VII of the CPC. The relevant portions of the said application which are necessary for adjudication of the present case are reproduced as under:-

*“2. The Defendants have engaged Mr. Siddharth Khattar Advocate in the present matter, however after some time, they engaged a new Counsel namely Mr. Lalit Kumar Advocate to defend the present matter along with their other court matters/cases.*

*3. The present matter being civil in nature, Defendants were completely dependent on their advocates and Defendants were assured by their Advocates that they have got a very good defence and their presence will not be required. Defendants were further informed by their counsel that their presence shall be required before the Court only at the time of recording their evidence. Having paid the lump -sum fees to their advocate and also having signed and filed the Written Statement, Defendants (having complete faith on their Advocate), lost touch of the present matter.*

*4. The Defendant No.1 is/was an acute patient of sarcoidosis. Doctor advised him that only Forty percent of his lungs are in working condition. Defendant No.1 is/was also suffering from severe arthritis and as a result he is/was unable to walk even*



*short distances. Defendant No.2 is a nephew of Defendant No.1 and is dependent upon the Defendant No.1 who appointed the Advocate on behalf of Defendants. It is the Defendant No.1 who interacted with the Advocate, paid fees to him.*

*5. Somewhere in the year June 2023 the Defendants' have certain issues with their counsel Mr. Lalit Kumar Advocate in respect of the legal fees. As a result, Mr. Lalit Kumar Advocate stopped taking calls of the Defendants. There was lot of confusion, Defendants were helpless and after some time, Defendants appointed a new Counsel for their court matters being handled by Mr. Lalit Kumar Advocate.*

*6. The present matter escaped the attention of the Defendants as it was not included in the list of matters being handled by Mr. Lalit Kumar Advocate on behalf of Defendant, maintained at their end. Defendants engaged the present Advocate for their various Court matters being earlier handled by their erstwhile counsel namely Mr. Lalit Kumar Advocate. The present matter was somehow not mentioned in the list, neither they had any documents in respect of the present matter nor any documents or file of papers were received from their erstwhile Advocate. It is for this reason that the present matter was left unattended.*

*7. On March 27, 2024, while going through the set of documents filed along with the charge sheet (the criminal proceedings titled as "State versus Darshan Lal and Another" (bearing Cr Cases 2410/2023, pending adjudication before the Court of Learned Metropolitan Magistrate at District Court, Saket New Delhi) i.e. another matter of Defendants being handled by their present counsel it was noticed that the copy of plaint of the present matter was made as part of the*



charge sheet.

8. *During the course of meeting on March 28, 2024, counsel for the Defendants asked the Defendants about the status of the proceedings of the present matter, Defendants were not able to give proper response and were clueless. Defendants informed that they had lost track of the present matter and were not able to recollect anything. Counsel for the Defendants immediately asked his associate Advocate to check the case status at the website of this Hon'ble Court on March 28, 2024. Perusal of the Orders of the present matter available on website of this Hon'ble Court reflected that Defendants were proceeded ex-parte on October 28, 2022.*

9. *Defendants remained unaware about the pendency and the status of the present proceedings as their erstwhile Advocate did not informed them about the case progress and did not even inform about the next date of hearing and did not appeared in the matter which ultimately again resulted in passing of ex-parte Order dated October 28, 2022 against them. The Defendants came to know about the pendency of the present proceedings and passing of the ex-parte order against them for the first time only on March 28, 2024, when their counsel had taken out the orders of the present matter from the website of this Hon'ble Court. The Defendants instructed the present counsel to draft and file the present Application.*

10. *Thus, it is established from the material available on the record that Defendants could not appear in the above matter due to their sole dependency on their Advocate namely Mr. Lalit Kumar. It is also established that at no point of time court notice, issued to Defendants in terms of Order dated May 25, 2022*



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*was never served/ on them and as such Defendants were not aware about the present proceedings. Had the Defendants were aware about the present matter the Defendants would have appeared in the above matter.*

*11. It is submitted that Defendants are the victim who had suffered due to the misconduct of his Advocate and Defendant No..1 through his son namely Mr. Abhishek Gut filed a Complaint against their Advocate namely Mr. Lalit Kumar. It is due to their erstwhile Advocate dereliction and lackadaisical approach which had made the Defendants to suffer a lot in the various Court matters handled by him. Copy of Complaint dated May 19, 2023 by the son of the Respondent/Accused to the Bar Council of Delhi is being filed along with the list of documents.*

*12. Thus it is apparent from the record of the present matter and also even otherwise that the Defendants were never aware about the present proceedings and Defendants were prevented from appearing on earlier occasion which was beyond their control. It is for this reason the Defendants could not enter their appearance either personally or through their advocate in the present matter on earlier occasions.*

*13. It is submitted that a litigant must not suffer on account of fault of his counsel. The Defendants being a layman are not at any fault as they are the one who have done everything in their power by engaging their counsel on the first instance itself. If the present Application is rejected, the only one, who would suffer would not be the lawyer, who did not appear but the party whose interest he represented.”*

10. Notice has been issued on the said application. Reply has been filed by the Plaintiffs.



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11. The short question which arises for consideration is as to whether sufficient cause has been made out by the Defendants to set aside the *ex parte* order.

12. A perusal of the present application does not indicate any valid reason as to what prevented the Defendant from pursuing the instant case. The fact that Defendant No.1 is suffering from *sarcoidosis* alone and that only 40% of his lungs are working is not sufficient or any ground for Defendant No.1 not to pursue the case or keep enquiring about the case.

13. The application does not reveal that the Defendant was pursuing the matter diligently or even contacting his lawyer or finding about the status of the case. Merely stating that he was relying only on his lawyer, who according to the Defendant was not communicating with him from 13.09.2022 actually shows that the Defendant has not been vigilant and has been indolent.

14. Even if the benefit of COVID-19 pandemic period is given to the Defendants, this Court can take judicial notice of the fact that the benefit of limitation was only given upto 28.02.2022. The Defendant has been set *ex parte* only in 28.10.2022 only when things attained normalcy after the COVID-19 pandemic. There is no reason forthcoming as to why the Defendant kept quiet for over two years. Therefore, the Defendant does not deserve any sympathy from this Court. However, in the interest of justice and keeping in mind the fact that written statement has been filed and the evidence has commenced, this Court is inclined to set aside the *ex parte* Order dated 28.10.2022 but with imposition of exemplary costs on the Defendant for his complete lack of diligence.

15. Merely blaming the lawyer is not sufficient as there is nothing on



record that any action has been taken against the erstwhile lawyer also. This Court is not aware as to what is the nature of dispute between the lawyer and the Defendant. In fact, the application indicates that the Defendant is having a number of cases and it is not stated as to whether the Defendant has become *ex parte* in all those cases.

16. It is also pertinent to note that the Defendant is having criminal cases and was pursuing the same, therefore, there is no reason as to why this case has to be left out by the Defendant. It actually shows that the act of the Defendant is to leave the Plaintiffs in lurch in a sublime confidence that courts are very lenient in such cases. The Defendant's actions clearly shows that he has been sleeping on his rights and woke up from a slumber and this Court condemns such behaviour of the litigants. Moreover, the matter has reached the stage of evidence and the Defendant's actions only go on to show that it is a deliberate attempt to stall the proceedings in the instant suit, thereby putting the Plaintiff in a vulnerable spot. Therefore, a strong message has to be sent to indolent litigants who do not pursue their cases diligently.

17. The Defendant is a builder who has entered into a Collaboration Agreement. The Defendant cannot be let away lightly for his absence for over two years wherein the Defendant has not even taken care to contact his lawyer or take steps to follow up on the case if the lawyer was not responding.

18. Be that as it may. Defendants have been set *ex-parte* by this Court vide Order dated 28.10.2022. The Defendants will lose their valuable right if the Order dated 28.10.2022 is not set aside. Even though it was the duty of the Defendants to pursue the case, in the interest of justice, this Court is



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inclined to set aside the ex-parte Order dated 28.10.2022 but only by imposing heavy costs of Rs.7,50,000/- to be paid by the Defendants within four weeks from the date of upload of this Order in the following manner:-

- i. A sum of Rs.3,50,000/- to be paid to the Plaintiffs;
- ii. A sum of Rs.2,00,000/- be paid to the *Armed Forces Battle Casualties Welfare Fund*;
- iii. A sum of Rs.1,00,000/- be paid to the *Delhi High Court Advocates Welfare Trust*;
- iv. A sum of Rs.1,00,000/- be paid to the *Delhi High Court Staff Welfare Fund*.

19. Ordered accordingly. The application is disposed of.

**CS(OS) 601/2019 & I.A. 12352/2020, I.A. 6811/2022**

20. Let the evidence be recorded in a time bound manner.

21. List before the learned Joint Registrar on 19.05.2026.

**SUBRAMONIUM PRASAD, J**

**MARCH 11, 2026**

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