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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1/2019, I.A. 23264/2023, I.A. 23785/2023, I.A.11363/2020**
SHRI DEEPAK KUMAR ROHILLA Plaintiff

Through: Mr. S.C. Singhal, Advocate (through
V/C).

versus

SHRI ANIL KUMAR ROHILLA & ANR. Defendants

Through: Mr. Tushar Mahajan and Mr. Sudhir
Mahajan, Advs. for defendant no. 1.
Mr. Rajesh Gupta, Adv. for defendant
no. 2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
04.01.2024

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**I.A. 23263/2023 (under Order IX Rule 7 read with Section 151 CPC for
Setting Aside the Order Dated 06.03.2019) & I.A.23264/2023 (under
Section 5 of Limitation Act read with Section 151 CPC on behalf of
defendant No.1 seeing Condonation of Delay of 1648 days in filing the
application under Order IX Rule 7 CPC)**

1. An **application I.A.23263/2023** has been filed on behalf of defendant no. 1 under Order IX Rule 7 read with 151 CPC for setting aside the order dated 06.03.2019 vide which defendant no. 1, Sh. Anil Kumar Rohilla, was proceeded ex-parte.

2. It is submitted that the defendant no. 1 was served and he on service, appointed an SPA holder for appearance on 06.03.2019. However, defendant



no. 1 was seriously ill and for these reasons, SPA holders of plaintiff approached defendant no. 2 Ravi Kumar Rohilla, who assured that he shall be looking after the interest of both the parties in the suit property and will file a common Written Statement on behalf of both the defendants. He had also shown the Written Statement to SPA holder he had got prepared through counsel. However, recently during the mediation proceedings conducted before High Court Mediation Centre, SPA holder of the defendant no.1 came to know that despite assurances, Written Statement was filed by defendant no. 2 only on his behalf and no Written Statement has been filed on behalf of defendant no. 1. Therefore, a prayer is made that order dated 06.03.2019 proceeding ex parte against defendant no. 1, be set aside.

3. It is further explained that the reason for non-appearance was that defendant no. 1 was admitted in January, 2018 for treatment. He was again admitted in the hospital on 22nd January. Thereafter, he has been under regular treatment for his ailments. His SPA holder Neha Rohilla, who is his daughter, became aware of the exparte order only during mediation. A prayer is therefore, made that the exparte order may be set aside.

4. The application is supported with **I.A. 23264/2023** under Section 5 Limitation Act read with Section 151 CPC for condonation of delay in filing the present application. The medical documents of the defendant no. 1 have been filed in support of the aforesaid prayer made in the application.

5. Learned counsel for the plaintiff has opposed the application and stated that there is a sheer negligence on the part of the defendant no. 1.

6. **Submissions heard.**

7. For the reasons stated in the applications, the delay is condoned and



the ex-parte order dated 06.03.2019 is hereby set aside, subject to costs of Rs. 10,000/- **to be paid to the plaintiff.** Both the applications are thus allowed.

CS (OS) 1/2019

8. The learned counsel for the defendant no. 1 submits that he has also filed his written statement alongwith the application. However, the counsel for defendant No. 1 seeks time for satisfying that the written statement can be taken on record belatedly, after expiry of 90 days.

9. Be listed for arguments on the pending applications on 04.03.2024.

NEENA BANSAL KRISHNA, J

JANUARY 4, 2024/akc