

CS 65/23

VIPIN GUPTA Vs. DEPENDER RAWAT

06.09.2023

Pr.: Sh. S.K.Tiwari, Ld. Counsel for the plaintiff.

Sh. Ashish Sharma, Ld. Counsel for the defendant.

Reply filed by plaintiff to application of the defendant under Order IX Rule 7 r/w Section 151 CPC.

Copy given.

Arguments heard on the application from Ld. Counsels for the parties and considered their submissions and perused the record.

Sole ground for setting aside of exparte order dated 27.03.2023, as mentioned in the application, is that after filing of written statement, file of counsel for defendant got misplaced, therefore, applicant and his counsel could not appear on the date fixed. On 24.07.2023, the applicant inquired about the date of hearing and then the counsel searched the case on E-court portal and only then they came to know about passing of exparte order.

After considering the submission of Ld. Counsel for the defendant, I am of the opinion that, it does not appear to be a valid ground, as defendant could have enquired about the date of hearing from his counsel earlier and they could have searched the case on E-court portal, which they failed to do. Therefore, no ground for setting aside of exparte order has been shown. However, it cannot be lost sight of that written statement had been filed on record by the defendant prior to his proceeding exparte but subsequently he was not diligent in attending the Court.

In my opinion, it would be in the interest of justice that parties are given opportunity to defend their case on merits and

on mere technicalities, they should not be deprived of their valuable rights, hence, ex parte order dated 27.03.2023 is set aside, but at the same time, the defendant should be burdened with cost for not being vigilant in attending the court proceedings.

Accordingly, order dated 27.03.2023 whereby defendant was proceeded ex-parte is hereby set aside, subject to cost of Rs.5,000/- to be paid to the plaintiff. **Accordingly, application of the defendant under Order IX Rule 7 r/w Section 151 CPC stands disposed off.**

Put up on **17.10.2023** for filing of replication and original documents, if any and payment of cost by the defendant to plaintiff.

(Shail Jain)
Principal District & Sessions Judge,
East District, KKD Courts, Delhi.
06.09.2023