

CS 579/18
ASHISH GUPTA
Vs.
M/S SHUBHKAMNA BUILD TECH PVT LTD

05.06.2026

Present : None.

a) Arguments have been heard on the application filed by the plaintiff under Section 151 of the Code of Civil Procedure seeking recall of the order dated 12.07.2023 whereby the right of the plaintiff to lead plaintiff's evidence was closed.

b) It is stated in the application that the file of the present case was inadvertently tagged with certain files pertaining to cases pending before the District Court, Tanakpur, Uttarakhand. Consequently, the file of the present case remained untraceable and, therefore, the plaintiff could not prepare and file the evidence affidavit within the time granted by the Court. It is further stated that the file was traced only on 10.11.2023 when the Ld. counsel for the plaintiff visited Tanakpur in connection with proceedings in other matters pending there. It is also averred that soon thereafter the Ld. counsel for the plaintiff fell seriously ill and remained bedridden for about seven days.

c) On these grounds, it is contended that the plaintiff could not file the evidence affidavit for bona fide reasons and there was no deliberate intention on the part of the plaintiff to delay the proceedings. It is further argued that no prejudice

would be caused to the defendants if the order dated 12.07.2023 is recalled, as the defendants would have full opportunity to cross-examine the plaintiff and contest the suit on merits.

d) Per contra, Ld. counsel for defendant no. 2 opposed the application and submitted that issues in the present case were framed on 29.09.2020. Thereafter, several opportunities were granted to the plaintiff to file the evidence affidavit and lead evidence. Despite such repeated opportunities, the plaintiff failed to file even the evidence affidavit or supply a copy thereof to the defendants. It is therefore prayed that the application be dismissed.

e) I have considered the rival submissions and perused the record.

f) The record reveals that the issues in the present suit were framed on 29.09.2020 and thereafter the matter remained pending for plaintiff's evidence for a considerable period. It is true that several opportunities had been granted to the plaintiff for filing evidence affidavit and leading evidence. The explanation furnished in the instant application indicates that the case file had been misplaced owing to inadvertent tagging with files of cases pending before another court and remained untraceable for some time. The explanation, though not entirely satisfactory, cannot be said to be wholly implausible. The plaintiff has also explained the subsequent delay by referring to the illness of the Ld. counsel.

g) It is a settled principle that procedural rules are handmaids of justice and ordinarily disputes should be adjudicated on merits rather than on technical defaults. At the same time, the inconvenience caused to the opposite party and the delay in disposal of the suit cannot be ignored.

h) In the facts and circumstances of the case, this Court is of the view that one final opportunity deserves to be granted to the plaintiff to lead evidence, subject to payment of costs, so that the controversy between the parties may be decided on merits.

i) Accordingly, the application is disposed of as allowed. The order dated 12.07.2023 closing the plaintiff's evidence is recalled, subject to payment of costs of Rs.3000/- to be paid by the plaintiff to the defendant no. 2.

The plaintiff is granted one last and final opportunity to lead plaintiff's evidence on the next date of hearing. Let the evidence affidavit of plaintiff be filed within four weeks with advance copy to the defendants.

As per record none has been appearing on behalf of the defendant no. 1 since many dates. Let Court notice be issued to the defendant no. 1 to appear before the Court on NDOH.

Put up for PE on **30.09.2026**.

(Hem Singh)
District Judge-01
(East)/KKD/Delhi/05.06.2026