

**In The Court of Sh. Raghubir Singh,  
Additional District Judge-01, (East),  
Karkardooma Courts, Delhi.**

MISC. No. 671/18

In the matter of :-

Smt. Kamla Devi(Deceased)  
Through her legal heirs

1. Mr. Alok Chandra,  
S/o Late Gorakh Ram
  2. Mrs. Nirmala Devi  
W/o late Shri Ashok Chandra
  3. Mr. Atul Chandra  
S/o late Shri Ashok Chandra
  4. Ms. Anubha Chandra  
D/o late Shri Ashok Chandra  
All resident of  
3, Saini Enclave,  
Delhi - 110092
- .....Plaintiffs

Versus

Mrs. Kailash Kumari Sharma,  
W/o late Shri Ravi Nath Sharma,  
R/o 699A, Block-B, Gali No. 2  
Ganesh Nagar-II, Shakarpur,  
Delhi-110092

.....Defendant

Date of Institution : 10.12.2018  
Date of Reserving Order : 01.04.2021  
Date of Decision : 01.04.2021

## **ORDER**

1. This adjudication is towards the application u/o 9 r 13 CPC as well as application u/s 5 Limitation Act seeking condonation of delay in filing the first application i.e. application u/o 9 r 13 CPC.

2. Both these applications were filed on 28.11.2018 and in the application u/o 9 r 13 CPC, it is prayed that the ex-parte judgment dated 15.03.2018 and decree dated 25.05.2018 be set aside whereas in the later application it is prayed that 20 days delay in moving the first application be condoned.

3. I have heard ld. counsels for the parties and perused the record carefully.

4. As far as application u/s 5 Limitation Act is concerned, though, no ground of merit is made out, yet, in the interest of justice and to dispose off the matter in a better way, the same is hereby disposed off as allowed.

5. Now, coming to the application u/o 9 r 13 CPC, the application on the very face of it is devoid of merits. Bare perusal of the main case file reveals that the defendant/applicant had not only been duly served but also that there is no ambiguity on the said aspect as is made clear by a bare perusal of the main case file. As a matter of fact, initially the defendant stood served through her daughter-in-law Smt. Meenakshi Sharma and the plaintiff had also filed an affidavit to that effect, however, the ordersheet dated 27.03.2017 reveals that the Court deemed it fit to order that the defendant be again served. Further, as per ordersheet dated

07.06.2017, the defendant had even refused to accept/claim the process/summons as was reported by the postman who had gone to deliver the same at the given address of the defendant. Hence, it was directed that in case of refusal or premises being found locked, the defendant be served by way of affixation and accordingly, the process was issued for the next date of hearing i.e. 02.08.2017. The ordersheet of said day reveals that one Ms. Jyoti was found there at the given address of the defendant who claimed herself to be the daughter of the defendant(applicant) and refused to accept the service. Hence, in compliance of the court order, the summons were duly affixed there at the given address of the defendant. It was a valid service in the eyes of law and in terms of the court orders. Furthermore, the very orderhsheet also reveals that the defendant even did not claim/receive the summons sent through registered post despite visits by the postman on two different dates. Thus, it becomes clear that the defendant was not only clearly knowing about the filing of the present suit but also that he intentionally avoided to receive the process as well as to appear in the court to defend the proceedings. It is also a matter of fact that neither by way of the application in hand nor otherwise it was denied or disputed in any sense that Ms. Jyoti was the daughter of the defendant and/or Smt. Meenakshi Sharma was the daughter-in-law of the defendant. It is also a matter of fact that the address on which all these processes were issued is/was the detailed and correct address of the defendant and on the very address even the legal notice had also been sent by the plaintiff to the defendant

prior to the filing of the present suit. Accordingly, it becomes crystal clear that the application u/o 9 r 13 CPC is entirely devoid of merits and deserves dismissal as the same is being used to frustrate the very purpose of the proceedings by the bonafide litigant i.e. the plaintiff. Accordingly, the same is hereby disposed off as dismissed.

**6.** File be consigned to Record Room as per rules.

Announced in the open  
Court on 01.04.2021

(Raghubir Singh)  
Additional District Judge-01  
(East)/KKD/Delhi /01.04.2021