

03.09.2024

Pr: Sh. N.K.Bamari, Id. Counsel for plaintiff through VC.

Sh. Uma Kant Mishra, Id. Counsel for MCD.

Sh. Hemant Mishra and Sh. Sadiq Ali, Id. Counsels for D1 and D2.

Sh. C.P. Sagar and Ms. Chanchal Verma, Id. Counsels for D4.

Sh. Shiv Dutt Kaushik, Id. Counsel for D11/DUSIB

Ms. Vidhi Gupta, Id. Counsel for defendant/DDA through VC.

Status report filed on behalf of D11, copy be supplied.

1. Perusal of the record reveals that an application under Order IX Rule 7 CPC filed on 29.07.2024 by the defendant No.1 and 2 is pending adjudication.

Heard on the above application.

2. It is averred in the application that Id. Counsel for the defendant No.1 and 2 was out of station for over one year and was very rarely appearing before the court for his family reasons as family member was suffering and was in critical conditions and that on 25.09.2023 defendant No.1 and 2 were proceeded ex parte. It is further averred in the application that defendant NO.1 and 2 never uprised about the proceedings and dates for the reason above, therefore, they were not able to appear before this court on many dates from 11.07.2023 onwards and that non appearance of the defendants are neither intentional nor deliberate but due to above reasons and that suit of the plaintiff is still at initial stage, copy of amended plaint is supplied by plaintiff on 19.03.2024 and hence no prejudice will be caused to plaintiff, if the order dt. 25.09.2023 be set aside.

3. Reply to the above application was filed on 30.07.2024 on behalf of the plaintiff to the application filed by the defendant No.1 and 2 for setting aside ex parte order dt. 25.09.2023 wherein plaintiff denied all the allegations/facts as mentioned in the application and prays for dismissal of the present application.

4. I have heard rival contentions of parties and perused the record in light of the relevant statutory procedure of the code.

5. Order IX Rule 7 of the code provides that when the court adjourned the hearing of the matter ex parte, the defendant at or before such hearing appearing and explains good reasons for his previous non appearance, he may be heard in answer to the suit as if, he had appeared on the day fixed for his appearance. The court may on such terms as it directs pass orders on such application.

6. I observed that application does not mention any single ground much less plausible one for setting aside the order dt. 25.09.2023. The reason for filing the same after period of ten months is unexplained. The carelessness of defendants/applicant is writ large. The matter is pending for framing of issues.

7. It is settled law that rules and procedures are handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously caused prejudice to the adversary party, courts must

lean towards doing substantial justice rather than applying upon procedural and technical violation. We should not forget the fact that the litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underline truth in every dispute.

8. Having heard the submissions and perused the record, it is revealed that the present matter is suit for partition of property owned by deceased mother of parties, and considering the conduct of the defendants and the fact that matter is at initial stage, this court is of the opinion that present application should be allowed but subject to heavy cost.

9. In view of the above, after considering the submissions made as well as facts and circumstances of the case, the present application under Order IX Rule 7 CPC filed on behalf of the defendant No.1 and 2 is hereby allowed subject to payment of cost of Rs.10,000/- each by defendant No.1 and 2 to the plaintiff. Consequently after payment of cost, written statements of defendant No.1 and 2 be taken on record.

10. Accordingly application under Order IX Rule 7 CPC is disposed off being allowed.

Put up for framing of issues on 28.10.2024.

(Pooja Jain)
District Judge-03
Court Room No. 206, N/B
East District, KKD Courts
Delhi. 03.09.2024