

01.05.2025

Present: Sh. Kartikay Kaushik, Ld. Counsel for plaintiff.

Ms. Annu Sharma, Ld. Counsel for defendant no. 1.

Defendant no. 2 and 3 in person.

Submissions on the application of defendant under Order 9 Rule 7 CPC are heard.

Put up for perusal of file and consideration in the post lunch session.

Hearing is resumed at 03:24 pm

Present: None.

As per case record, the summons for settlement of issues issued to the defendants were not served at the addresses through process server as the address was reported as left and thereafter the defendants were ordered to be served by way of publication in newspaper. The summons qua the defendant were published in Rashtriya Sahara New Delhi Edition dated 13.08.2023 and they were deemed served with the summons and they were granted time to file written statement till 13.09.2023. No written statement was filed by them and vide order dated 16.11.2023, plaintiff was asked to lead the evidence.

On next date of hearing, it was found that the present application has been filed by the defendant Rekha Goel for setting aside the order proceeding her ex parte with the averments

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that due to deep depression and Covid-2019 facing struggle for livelihood property bearing no. PU-22, Pitampura had been sold by husband of applicant in January 2023. It is averred that she received a call from previous neighbour informing about filing of recovery suit by the plaintiff against the defendants and after searching the e-court site, she came to know about the present matter. It is claimed that she will face irreparable loss if the order is not set aside and that no prejudice would be caused to the plaintiff if the order is set aside.

On the other hand, the application is opposed on behalf of plaintiff with the averments that the summons were deliberately avoided and that the applicant and her other family members were having the knowledge of filing of the suit as the summons were sent to them through WhatsApp. It is averred that the intentions of the applicant and other family members were to delay the proceedings to avoid the repayment. The counsel for the plaintiff further submitted that there is no ground to set aside the order.

The reports on the summons issued to the defendants are perused. The perusal of summons issued for 23.02.2023 reveals that when the process server tried to send the photo of the summons to the telephone number mentioned qua the applicant, he received the message “address not found” whereas the message was successfully delivered on the telephone numbers mentioned for remaining defendants who are the family members of the applicant. Even during the arguments when defendant Jai Parkash Goel present in the Court was asked about the telephone number mentioned on his summons, it was stated that the number

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was being used by his wife who is the applicant. Thus, the facts show that the applicant was having the knowledge of pendency of the suit, however where the address was left and thereafter the summons were served through publication, a liberal approach is taken especially where plaintiff may be compensated monetarily for the delay occurred in the matter at the part of applicant, the application is allowed and applicant / defendant no. 1 is granted a week time to file the written statement subject to compensation of Rs. 10,000/- to the plaintiff. Copy of written statement be supplied to plaintiff so that its replication if any may be filed.

Put up on 22.05.2025 for payment of compensation, filing of replication and settlement of issues.

(SUNIL CHAUDHARY)
DJ-04/North-West
RHC/Delhi 01.05.2025