

05.12.2024

Present: Plaintiff in person with Ld. Counsel, Sh. Uday Prasad Singh.
Sh. Naveen Kumar Chaudhary, Ld. Counsel for defendant.

It is stated by Ld. Counsel for defendant that no further submissions on the application are to be made.

The plaintiff has filed the present suit for possession, mesne profits and permanent injunction with the averments that she is actually and absolute owner of property bearing no. E-5/85, Sultan Puri, Delhi and that defendant who is younger brother of her husband was allowed to live at the first floor of the property which was lying vacant and thereafter he was also given on request the shop on ground floor for doing some work to earn but he never worked in the shop and occupied which is still using as store and parking for his motorcycle. The plaintiff asked the defendant to vacate the premises under his occupation and to hand over the possession to her but despite requests and legal notice dated 26.05.2016, he did not hand over the possession to the plaintiff.

Summons of the suit were served upon defendant for 18.11.2016 and as none appeared on his behalf, he was proceeded ex parte by Ld. Predecessor of this Court and plaintiff was asked to lead evidence by settling the issues. Thereafter two witnesses

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were examined by plaintiff and during the pendency of the matter for arguments, it was dismissed for non appearance of the plaintiff.

The suit has been restored to its original number and stage vide order dated 09.01.2024. The application has been filed by defendant on 21.03.2024 for setting aside the order dated 18.11.2016. It is the contention of the defendant that after receiving the summons by his wife, she could not understand the contents of the notice being household lady and put the same at some place which could not be found and she also forgot the same and did not inform the defendant. It is averred that applicant could not take necessary steps for appearance before the court. It is further contended that during pandemic, the fact could not come into the notice of defendant till 08.12.2022 and then applicant contacted his counsel who after inspecting the file came to know about the order and advised the applicant to file the application.

It is contended that at the time of filing of earlier application, matter was pending for restoration of the suit and after restoration of the suit, present application is filed.

On the other hand, plaintiff is opposing the application stating that defendant did not appear in the court deliberately only to drag the trial and now making a concocted story. It is further submitted that if the application is allowed then the matter will go to the stage of the completion of pleadings and about 8 years have passed.

The applicant is also claiming ownership of the suit property and has averred that it was purchased jointly in the name

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of applicant and the husband of the plaintiff. The court should endeavour to decide the lis on merits especially where plaintiff may be compensated for the delay in trial of her suit due to the conduct of defendant, thus, to meet the ends of justice, application is allowed and defendant is allowed to join the trial subject to payment of compensation of Rs. 10,000/- to the plaintiff.

The written statement of defendant be filed within 30 days upon payment of compensation to the plaintiff and its copy be supplied to opposite party/counsel so that its replication may be filed.

Put up on **23.01.2025** for completion of pleadings and settlement of issues.

(SUNIL CHAUDHARY)
DJ-04/North-West
RHC/Delhi 05.12.2024