

**IN THE COURT OF MS. RUCHIKA SINGLA,
DISTRICT JUDGE-03, NORTH-WEST DISTT.,
ROHINI COURTS, DELHI**

CS DJ 494/22

Suresh Khurana Vs. Antriksh Developers & Promoters Pvt. Ltd.

01.03.2025

Order

1. Vide this order, I shall dispose off the application u/O 9 Rule 7 r/w Sec. 151 CPC filed by the defendant no. 1 seeking setting aside of the order dt. 10.09.2024 vide which the defence of the defendant no. 1 was struck off and the defendant no. 1 was proceeded against exparte. No reply was filed by the plaintiff. However, written arguments were filed. Arguments have been advanced by both the parties on the last date. I have also gone through the record.

2. It is submitted by Ld. counsel for the defendant no. 1 that in compliance of the order dt. 14.02.2024, the defendant no. 1 had filed its WS on 11.03.2024. On 01.05.2024, it was directed by this Court that the copy be supplied to the Ld. counsel for the plaintiff which was complied

with on the same date. It is stated that the screen shot of the service of the WS upon the Ld. counsel for the defendant no. 1 is attached with the present application.

3. However, on that date, the matter was adjourned for 02.07.2024 but inadvertently, Ld. counsel noted the next date of hearing as 06.11.2024. When the Ld. counsel appeared on 06.11.2024, he found that the matter had already been taken up on 02.07.2024 and 10.09.2024 and that the defendant no. 1 had been proceeded against exparte for non-appearance and the defence was struck off on account of non-supplying the copy of the WS to the plaintiff. It is submitted that the non-appearance on 02.07.2024 and 10.07.2024 was not deliberate as the date was wrongly noted by him. Further, the copy of the WS is already supplied to the plaintiff's counsel on 01.05.2024 and this fact was concealed by the Ld. counsel for the plaintiff. Infact, he misrepresented to the Court on 02.07.2024 that he had not received the copy. Hence, it is submitted that the impugned order may be set aside and the defendant no. 1 may be permitted to lead his defence.

4. Application is strongly opposed on behalf of the Ld. counsel for the plaintiff. It is submitted that the ground that the wrong

date was noted by Ld. counsel for the defendant is flimsy and misleading. It is submitted that his details qua Whatsapp and Email ID were mentioned in the ordersheet dt. 01.05.2024. It is submitted that when the Ld. counsel complied with the directions of this Court by sending the copy of the WS at his Whatsapp No., it cannot be that the date of hearing was not seen by him. Hence, it is stated that the ground which is taken by Ld. counsel is misleading. Further, the non-appearance is deliberate as the defendant no. 1 wishes to delay the present matter. Hence, it is submitted that the application may be dismissed.

5. Record perused.

6. The facts of the case which led to the present application are as mentioned above. Ld. counsel for the defendant has placed on record the copy of the screen shot as per which the copy of the WS was supplied to the Ld. counsel for the plaintiff through Whatsapp on 01.05.2024 itself. Ld. counsel for the defendant has submitted that he was unable to appear on 02.07.2024 and 10.09.2024 as he had noted the wrong date of hearing. Ld. counsel for the plaintiff has argued that the defendant no. 1 has perused the order sheet dt. 01.05.2024 to note down

his Whatsapp No. and Email ID and hence, his submission that the date was noted down incorrectly is wrong and misleading.

7. However, perusal of record shows that on 01.05.2024, both the Ld. counsels were appearing through VC and the Ld. counsel for the plaintiff had shared his Email ID and Whatsapp No. on the Chat Box. However, it is also correct that the details were also mentioned in the ordersheet. However, the Court is inclined to give the benefit of the same to the Ld. counsel for the defendant no. 1 that he may have noted down the Mobile No. and Email ID of Ld. counsel for the plaintiff from the VC Chat Box itself. Further as mentioned above, Ld. counsel for the defendant no. 1 has placed on record the screen shot of the Whatsapp chat with the Ld. counsel for the plaintiff as per which the copy of the WS was supplied on 01.05.2024 itself. However, this fact was not disclosed by Ld. counsel for the plaintiff on 02.07.2024. Infact, he had stated that the copy had not been supplied.

8. Further, as such, no substantive proceedings have been carried out since the order dt. 10.09.2024. On the next date itself i.e. 29.11.2024, the present application was filed. Hence, as such, no prejudice shall be caused to the plaintiff if the application is allowed.

Hence, the application is allowed and the order dt. 10.09.2024 is set aside. The WS of the defendant no. 1 is taken on record.

(RUCHIKA SINGLA)
DJ-03 (N/W)
Rohini Courts :Delhi/01.03.2025