

CS No.137/21
Subhash Chander Vs. Alok Singhal

08.12.2023

Present : Plaintiff alongwith Ld. Counsel Sh. Devender Hora.
Defendant alongwith Ld. Counsel Sh. Vikash
Sharma (though defendant is already *exparte*).

Ld. Counsel for plaintiff submits that he does not want to file reply to the application moved on behalf of the defendant for setting aside the *exparte* order dated 21.03.2023, and that he will advance arguments straightway.

Arguments heard from both the sides on the application.

It is argued by Ld. Counsel for the defendant that on 21.03.2023, the defendant was out of station and he had informed the counsel to appear before the court but on that day the counsel was not well and therefore could not appear before the court due to illness. It is further argued that the non appearance of the defendant was neither willful nor intentional but due to above circumstances and therefore the *exparte* order dated 21.03.2023 be set aside.

On the other hand, Ld. Counsel for the plaintiff has argued that the default is not of one date but after being proceeded *exparte* on 21.03.2023, the defendant had defaulted in appearing in the court for several other dates and therefore the *exparte* order may not be set aside.

I have perused the order dated 21.03.2023, vide

which on account of non appearance, the defendant was proceeded *exparte*. Perusal of the file reveals that prior to the said date, defendant was appearing regularly in the court and pursuing the matter, though after being proceeded *exparte* there is a default in appearance on the other adjourned dates. However, without going into the technicalities and keeping in view the past conduct of the defendant, and in order to give fair trial to the defendant to contest this case and also keeping in view that it was the first default from his side, I take lenient view against the defendant. Accordingly, the application is allowed and the *exparte* order dated 21.03.2023 is set aside, subject to cost of Rs.2,500/- to be paid to the plaintiff on next date.

Put up for payment of cost and reply / arguments on the application under Order 12 Rule 6 CPC, on 19.02.2024.

(RENU BHATNAGAR)
Principal District & Sessions Judge
Shahdara, KKD Delhi/08.12.2023