

IN THE COURT OF GAURAV: DISTRICT JUDGE-01
SHAHDARA DISTRICT, KARKARDOOMA COURTS:
DELHI

CS No. 237/2023

In the matter of:-

Bal Kishan Sharma

.....Plaintiff

Versus

M/s.Real Imaging & Research

Centre LLP & Ors.

.....Defendants

03.07.2025

ORDER

1. Vide this common order, I shall proceed to decide the two separate applications both filed by the defendant no. 2, one application under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*), seeking setting aside the *ex-parte* order dated 03.08.2023, whereby he was proceeded *ex-parte* and another application under Order VIII Rule 1 CPC with enabling Section 5 of Limitation Act with a prayer to condone the delay in filing the written statement and also to take the same on record.

2. The plaintiff has filed reply to the aforesaid applications, denying all the assertions made therein and has prayed for dismissal of the said applications.

3. Arguments were heard at length on behalf of Ld. Counsels for parties.

4. Brief facts of the present suit are that the plaintiff filed the suit for recovery of Rs. 4.13 Lakhs against the defendants, alleging that the said amount was extended as a friendly loan. Out of the total amount, Rs.3.50 Lakhs is claimed as the principal sum given, while Rs. 63,000/- is claimed towards interest accrued thereon. However, despite making promise, repayment of the loan amount was not made by the defendants, leading to the institution of the present recovery proceedings.

5. The Ld. Counsel for the defendant no. 2, in the present application under Order IX Rule 7 CPC, contended that the defendant no. 2 could not file the written statement because in the month of March and April 2022, defendant no. 2 and his family were facing hardships to save their life from defendant no. 1 and his anti-social aliments as one criminal complaint of defendant no. 2 against defendant no. 1 and Ms. Deepika Goyal @ Deepika Gupta was pending in concerned court.

6. He further contended that the defendant no. 2 had also lodged complaints regarding these threats and had also filed Writ Petition (Crl.) No. 808/2022 before the Hon'ble High Court of Delhi, seeking security for himself and his family, which was disposed of on 18.04.2022 with directions to the police authorities.

7. He further contended that on 03.08.2023, when defendant no. 2 attended the chamber of his counsel, then he came to know

that his counsel was engaged in proceedings at Bahadurgarh District Court, Haryana, and his associate lawyers were also occupied at Patiala House Courts. Consequently, he could not appear before this Court on that date, leading to the *ex parte* order.

8. He further contended that the non-appearance and delay in filing the written statement were neither deliberate nor intentional but were caused due to the aforesaid circumstances.

9. He further contended that the defendant no.2 has already repaid the entire amount claimed by the plaintiff and therefore, is not liable for any further dues.

10. Per contra, Ld. Counsel for plaintiff vehemently opposed the aforesaid applications and contended that defendant no. 2 has mentioned the unreasonable causes and irrelevant facts and the applications do not disclose, not even a single justified or valid reason for the non-appearance of defendant no. 2 before the Court as well as for not filing the written statement within the stipulated period of service of summons and has also prayed that the present applications may kindly be pleased to dismiss with heavy costs being misuse of process of law.

11. I have heard the rival contentions made by Ld. Counsels for the parties and carefully perused the entire material available on record.

12. Before proceedings further, it is imperative to mention herein that as per Order IX Rule 7 CPC, it provides that where a party, having once appeared, fails to appear on a subsequent

hearing, and an *ex-parte* order is passed, such party may, on showing *sufficient cause*, seek recall of the said order.

13. It is a settled principle of law that “*procedure is the handmaid of justice, not its mistress*’ and that the procedural laws are meant to facilitate and not to obstruct the cause of justice. Likewise, substantive rights should not be defeated on technical grounds. Denial of an opportunity to participate in proceedings, especially where rights are to be finally adjudicated, can result in serious miscarriage of justice and violation of the principles of natural justice.

14. It is undisputed that summon was served upon defendant no. 2 on 21.04.2023 and that written statement has been filed only on 29.08.2023 (*date as mentioned in the application*), which is well beyond the period of thirty days, and also beyond the extended period of ninety days prescribed under Order VIII Rule 1 CPC. Thus, there is a substantial delay which needs explanation.

15. Since the application for condonation of delay has been filed beyond the outer limit of ninety days prescribed under Order VIII Rule 1 CPC, the prayer for taking the written statement on record cannot strictly be considered under the said provision alone. Accordingly, the said application is treated as one seeking condonation of delay under Section 151 CPC, to secure the ends of justice.

16. As regards the application under Order IX Rule 7 CPC, the reasons assigned by defendant no. 2 for his absence on

03.08.2023 that his counsel was away at Bahadurgarh District Court and his associate lawyers were engaged elsewhere are certainly not weighty or sufficient in the ordinary course to justify non-appearance. However, considering the nature of litigation, the overall background of hostility between defendant no. 2 and defendant no. 1, and the allegations regarding threats and criminal proceedings pending between them, it appears that the defendant no. 2 was under some stress and pre-occupation during the relevant period. While this by itself cannot be an excuse for non-appearance, it does merit a cautious, albeit strict, indulgence from the Court to ensure that substantial justice is not defeated merely on account of procedural lapses.

17. It is pertinent to mention herein that the explanation furnished by defendant no. 2, is far from satisfactory. Mere pendency of other legal proceedings does not absolve a litigant of his duty to diligently contest civil proceedings or to comply with statutory timelines. Defendant no. 2 ought to have displayed greater vigilance and seriousness in defending the present suit, particularly after service of summons.

18. Upon a careful consideration of the reasons put forth by defendant no. 2, this Court finds that the explanations for his non-appearance on 03.08.2023 as well as for the delay in filing the written statement are not wholly satisfactory or free from doubt. The circumstances cited, including threats to the life of defendant no. 2, criminal proceedings, and engagements of his counsel, though indicative of certain difficulties faced by the defendant, do not fully justify the prolonged inaction, particularly

after service of summons on 21.04.2023. Nonetheless, it cannot be overlooked that the disputes between the parties involve significant monetary claims and allegations which deserve adjudication on merits. Denial of an opportunity to defendant no. 2, at this stage, would result in closing the doors of justice and may lead to irreparable prejudice and a miscarriage of justice.

19. Therefore, although the reasons advanced are insufficient in their entirety, to a certain extent the circumstances narrated may be accepted as genuine, warranting the exercise of discretion in favour of allowing defendant no. 2 to contest the suit. However, it is equally important to ensure that the inconvenience and delay caused to the plaintiff is duly compensated. Ergo, this court is of the considered view that appropriate costs should be imposed upon defendant no. 2 as a condition for allowing his applications, so as to offset the inconvenience suffered by the plaintiff and to balance the equities between the parties.

20. Accordingly, in the interest of substantial justice and with a stern caution to defendant no. 2 to remain diligent henceforth, both the applications under Order IX Rule 7 CPC and under Section 151 are liable to be allowed, subject to payment of costs.

21. Accordingly, the *ex-parte* order dated 03.08.2023 is hereby set aside. The delay in filing the written statement by defendant no. 2 is hereby condoned and the same is taken on record, subject to payment of costs of Rs.10,000/- to be paid by defendant no. 2 to the plaintiff on the next of date of hearing. The applications filed by the defendant no. 2 under Order IX Rule 7

r/w Section 151 CPC and application under Section 151 CPC, are hereby disposed of as *allowed*.

(Typed to the dictation directly, corrected and pronounced in open court on 03.07.2025).

(GAURAV)
DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI