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CS DJ ADJ16099/16

ADESH KUMAR JAIN Vs. BRIJ RANI SHARMA ANR

12.09.2023

Present: Sh. Ashok Kumar Kaushik, Ld. Counsel for the plaintiff  
alongwith plaintiff.  
Sh. Manoj Kumar Tyagi, Ld. Counsel for LR's of deceased  
defendant no.1 (through VC).  
Sh. Sandeep Tyagi, Ld. Counsel for LR's of deceased defendant  
no.2 (through VC).

Arguments heard on application filed by the LR's of deceased  
defendant no.2 under Order 9 Rule 7 r/w section 151 CPC for setting aside  
ex-parte order dated 23.10.2019.

Put up for orders at 4:00 pm.

**(SHILPI M JAIN)**  
**ADJ-05 (SW):Dwarka Courts**  
**New Delhi:12.09.2023**

At 4:00 pm

Present: None for the parties.

Present application has been filed by the LR's of deceased  
defendant no.2 under Order 9 Rule 7 r/w section 151 CPC for setting aside  
ex-parte order dated 23.10.2019.

Ld. Counsel for the applicant submits that defendant no.2 was  
expired on 06.09.2022 and LR's of deceased defendant no.2 was impleaded  
vide order dated 31.01.2023. It is further submitted that LR's of deceased

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defendant no.2 came to know about the ex-parte proceedings only after going through the ordersheets via online. Lastly, it is stated that exparte order dated 23.10.2019 may be set aside.

Per contra, Ld. Counsel for the plaintiff has strongly objected the application under Order 9 Rule 7 r/w section 151 CPC as filed by the LR's of deceased defendant no.2. It is submitted that "no good cause" has been shown by LR's of deceased defendant no.2 for the absence of defendant no.2 as on 23.10.2019. It is further submitted that the present application is barred by limitation and should be dismissed with heavy cost.

Arguments heard. Record perused.

Perusal of the record reveals that defendant no.2 was proceeded ex-parte vide order dated 23.10.2019 passed by the Ld. Predecessor of this court. Perusal of the record also reveals that defendant no.2 was remained absent in as much as five dates of hearing prior to impugned order dated 23.10.2019. In fact, factum of ex-parte proceedings against defendant no.2 is duly mentioned in each and every court proceedings subsequent to impugned order.

It is well settled law that, in case defendant failed to appear in the court proceedings and proceeded ex-parte, he can move an application for setting aside ex-parte proceedings on the basis of **"good cause for his previous non-appearance"**.

Perusal of the record reveals that defendant no.2 has not taken any step for setting aside ex-parte proceedings against him and it is only after his demise, LR's of deceased defendant no.2 filed the present application for setting aside the ex-parte order dated 23.10.2019 thats too after the gap of 3.5 years of passing impugned order and without showing any '**good cause**'. It is also well settled law that mere impleadment of LR's of deceased defendant

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who is already proceeded ex-parte does not envisaged fresh right in favour of LR's for setting aside ex-parte proceedings. Moreover, present suit is filed in the year 2012 and one of the oldest case of this court.

In view of the above facts and circumstances, the present application under order 9 Rule 7 r/w section 151 CPC for setting aside the ex-parte order dated 23.10.2019 is deserves to be dismissed. Accordingly, same is dismissed.

**Put up for PE on 03.10.2023.**

**(SHILPI M JAIN)**  
**ADJ-05 (SW):Dwarka Courts**  
**New Delhi:12.09.2023**