

23 CS DJ ADJ 680/22 JASPAL SINGH Vs. SUNIL KUMAR @ SOMI AND ANOTHER

15.10.2024

Present: Sh. Yashwant Gehlot, Ld. Counsel for plaintiff.

Defendant no. 1 is already declared *ex-parte* vide order dt. 05.07.2024.

Sh. Mahesh Kumar Sharma, Ld. Counsel for defendant no. 1 along with defendant no. 1.

None for defendant no. 2.

Previous cost paid.

Argument heard on pending application u/o IX Rule 7 r/w Sec. 151 CPC for setting aside *ex-parte* order dt. 05.07.2024.

Perusal of the record reveals that, vide order dated 22.03.2024 matter was adjourned for cross-examination of PWs for 05.07.2024, as PW1 to PW5 were available but, Ld. Counsel for defendant was not available.

Ld. Counsel for applicant submits that, on CIS NDOH reflected as 08.07.2024 and he noted the same due to which could not appear on 05.07.2024 and proceeded *ex-parte*.

Per contra, Ld. Counsel for plaintiff submits that, on 22.03.2024 defendant no. 1 and 2 were duly present before this court and date of 05.07.2024 was given in their presence. It is also submitted that, e-court also reflecting 05.07.2024 and ordersheet is also uploaded.

This court carefully gone through the portal wherein history of case hearing for 22.03.2024 reflects 05.07.2024 as NDOH. Further, screen shot of E-court as filed by applicant does not accompany with any certificate u/s 63 of Bhartiya Sakshya Adhinyam, 2023. But, **considering the facts and circumstances of the present case and in the interest of justice, present**

application stands allowed subject to cost of Rs. 2,500/- to be paid to the plaintiff. It is clarified that, only two opportunities shall be given to the defendant to cross-examine PW1 to PW5 i.e. on 04.01.2025 and 22.01.2025.

Let PW1 and PW2 be present on 04.01.2025 for their cross-examination and remaining witnesses would be available on 22.01.2025 for their cross-examination.

Date is given as per convenience of both the parties.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 15.10.2024