

Civ DJ 160/25

HIMANSHU LEKHI Vs. PRINCE DUA

18.07.2026

Present: Plaintiff no.1 alongwith Ld. proxy counsel Sh. Manoj
(VC).

None for applicant/ defendant no.1.

Defendant no.2 is ex-parte.

ORDER

1. Vide this order, this Court shall decide the present application filed by applicant/ defendant no.1 seeking setting aside the ex-parte order dated 08.07.2025.
2. It is averred in the application that summons of the suit were served upon the applicant/ defendant no.1 on 18.03.2025 (wrongly mentioned in the application as 18.03.2024) for appearance on 08.07.2025. He instructed his earlier counsel to appear in the present matter, however, he did not appear and applicant / defendant was proceeded ex-parte. Subsequently, case was fixed for plaintiff's evidence. The applicant/ defendant no.1 tried to contact his earlier counsel but could not succeed, so he engaged a new counsel and he came to know about the ex-parte order dated 08.07.2025 after going through the on-line ordersheets. It is averred that non-appearance of applicant was neither intentional nor deliberate but due to non-appearance of his counsel who had instruction on behalf of applicant/

defendant no.1 to appear in the matter. It is averred that irreparable injury shall be caused in case ex-parte order is not set aside and prayer is made for setting aside the ex-parte order dated 08.07.2025.

3. Reply of application is filed by the non-applicant/ plaintiffs thereby opposing the application. It is submitted that present application is abuse of process of law being misconceived and liable to be dismissed outrightly. It is averred that applicant/ defendant no.1 was well aware of the factum of pendency of present suit as applicant/ defendant no.1 acknowledged the same during the suit filed by him against plaintiff / non-applicant before Ld. JSCC-cum-ASCJ-Guardian Judge, which suit was subsequently got withdrawn by the defendant / applicant no.1 on 30.05.2025.
4. It is averred that applicant/ defendant no.1 has failed to appear despite opportunities being afforded by the Court vide order dated 18.03.2025 and 08.07.2025. It is averred that present application is merely afterthought and has been filed to delay the proceedings of present suit. It is averred that conduct of applicant/defendant no.1 is lackadaisical and negligent. No sufficient cause has been even explained in the application for his non-appearance. Reliance is placed on the decision of case titled as M/s Skytech Construction Ltd vs. Ashok Kumar Sharma, AIR Online Del. 15 & Parimal vs. Veena (AIR 2011 SC 1150).

5. It is also averred that reliance placed by applicant/defendant no.1 on decision of Rajesh Wadhawan vs. Naeveen Sabharwal is wholly misplaced and misconceived as the same concerns the procedure under Order VI Rule 15A of CPC and bears no relevance to the facts of the present application.
6. Arguments heard. Record perused.
7. Admittedly, the applicant/ defendant no.1 was served in the present suit on 18.03.2025. Thereafter, the applicant/defendant no.1 was proceeded ex-parte on 08.07.2025. The copy of the ordersheets placed by the plaintiff of the suit filed by the applicant/defendant no.1 against the plaintiff shows that the applicant/defendant no.1 being conscious about the present suit withdrew the suit filed by him on 30.05.2025. The applicant/defendant no.1 has pleaded that in the month of December when his erstwhile counsel did not answer his phone calls, he engaged the present counsel and on 09.12.2025, the applicant/defendant no.1 got to know that he has been proceeded as ex-parte. Still the present application was filed on 07.01.2026. The defendant has not placed on record any material to show that defendant has taken any action regarding the inaction of his counsel. Mere assertion in the application without any supporting material does not inspire any confidence.
8. The observations made by the Hon'ble Supreme Court in case of **"Nitin Mahadeo Jawale & ors vs. Bhaskar Mahadeo Mutke "**, 2024 INSC 902, highlight the tendency of

the litigant to shift the blame on the counsel. The relevant para of said judgment is reproduced as under :

“6. We have noticed over a period of time the growing tendency on the part of the litigants in throwing the entire blame on the head of the advocate. Not only this, we have come across cases where the concerned advocate has filed an affidavit in favour of his client(s) saying that he was unable to attend the proceedings due to some personal reasons difficulties thereby facilitating the litigant to get the delay condoned”.

9. The applicant/ defendant no.1 being well aware about the pendency of the suit on 18.03.2025 itself did not file any written statement within the statutory period. The ground mentioned for the non-appearance on behalf of applicant/defendant no.1 lacks *bona fide*. It was the sole duty of applicant/defendant no.1 to vigilantly pursue the present suit. The applicant/defendant no.1 did not himself appear before the Court despite the information regarding the pendency of the present suit. Therefore, there is no substance in the explanation given by the applicant/defendant no.1 for his non-appearance. Hence, the application filed by the applicant/defendant no.1 is found meritless and same is dismissed.

Put up for ex-parte final arguments on **13.08.2026**.

(Sunil Choudhary)
District Judge-01(West), THC
Delhi/18.07.2026