

**New No. 13720/16**  
**Prem Sagar Sachdeva Vs Sanjay Bhatia**

**15.11.2016**

Present : Sh. Bhaskar Kumar Shukla-Ld. Counsel for Plaintiff.

Sh. Varun Sharma-Ld. Counsel for Defendant No. 3.

Sh. Deboshree Saha-Ld. Counsel for Defendant No. 4.

Sh. Manoj Jha-Ld. Counsel for proposed Defendant No. 5.

I have heard submissions of Ld. Counsel appearing on behalf of Defendant No. 4/Applicant on the application under Order 9 Rule 7 CPC along with accompanying application under Section 5 Limitation Act whereby it is prayed that ex-parte order dated 24.07.2014 passed against Defendant No. 4/Applicant be set aside.

Ld. Counsel for Plaintiff states that he does not wish to file any reply to the application.

In the course of arguments, Ld Counsel appearing for Defendant No. 4/Applicant submits that counsel who was earlier appearing for Defendant No. 4 inadvertently noted down next date of hearing as 25.07.2014 in his diary instead of 24.07.2014. In support of the submissions, copies of relevant pages of the diary have also been annexed with the application under consideration.

It is further submitted that thereafter the concerned Advocate failed to file vakalatnama of Defendant No. 4. It is further submitted that said Advocate of Defendant No. 4 parted ways with the Law Firm in the month of June-July, 2015 and all the files that he was handling were

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assigned to the other Advocate. It is submitted that it is due to this reason, delay has been caused and accordingly, it is prayed that delay in filing the application under Order 9 Rule 7 CPC be condoned and the application under Order 9 Rule 7 CPC be allowed, as prayed.

Ld. Counsel for Plaintiff/Non-Applicant, on the other hand, strongly opposed the application, though solely on the ground of delay.

I have considered the submissions made. It appears that Defendant/Applicant has furnished no explanation whatsoever as to why counsel who had wrongly noted down date of hearing as 25.07.2014 instead of 24.07.2014 failed to find out about the fate of the matter on the next day i.e. 25.07.2014, which as per own contention of Defendant/Applicant was well within his knowledge. The contention that counsel left his services of Defendant No. 4 Law Firm in June-July, 2015 also offers no significant explanation for delay in filing the application under consideration.

Be that as it may, interest of justice demands that one opportunity be granted to Defendant No. 4 to bring on record its defence and to contest the case on merits.

Thus, having regard to larger interest of justice, application under Order 5 Limitation Act and the accompanying application under Order 9 Rule 7 CPC are hereby allowed, subject to cost of Rs. 15,000/- to be paid to the Plaintiff. Both applications stand disposed of accordingly.

Defendant No. 1 and 2 are still unserved. Let Plaintiff file PF and RC for service of Defendant No. 1 and 2. Let Plaintiff also take steps for issuance of notice of the application under Order 6 Rule 17 CPC r/w Order 1 Rule 10 CPC to the propose Defendant namely Co-operation Bank on filing

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of PF and RC within 03 weeks returnable on next date of hearing.

Adjourned to **30.01.2017**.

**(Kaveri Baweja)**

**Additional District Judge-03 (West)**

**Tis Hazari Courts: Delhi.**

**15.11.2016**