

33 Civ DJ 489/2016 12125/16

GANPAT SHARMA Vs. MS HOME TREASURES ANR.

14.10.2025

Matter pertains to the year 2009

Present Shri Sachin Dhamija, Ld. Counsel for plaintiff.

Shri Nikhil Yadav, Ld. Counsel for defendants through VC.

Shri Shourya Sharma, Ld. Proxy Counsel defendants present
in the Court.

An application under Order 9 Rule 13 CPC is moved on behalf defendants to set aside/ recall of the order dated 04.06.2025 alongwith affidavit. It is submitted by Ld. Counsel for defendant that inadvertently he has mentioned Order 9 Rule 13 CPC on the application whereas the application should have filed under Order 9 Rule 7 CPC and has requested that the application be read under Order 9 Rule 7 CPC. In view of submissions made request allowed.

Ld. Counsel for defendant submits that he has moved this application due to sudden and unavoidable medical emergency faced by the Counsel on 04.06.2025 due to which he could not appear. Ld. Counsel for defendant submits that he is representing both the defendants and the present application be read for both the defendants as defendant no. 1 is the company and defendant no. 2 is one of the Director of the company.

Ld. Counsel for the plaintiff has vehemently opposed the application with the submissions that the defendants are in habit of filing such applications and thereafter do not pursue the matter. It is only delaying tactics on the part of the defendants. Further, Ld. Counsel for

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plaintiff has submitted that it is nowhere mentioned in the application that the application is filed for both the defendants as only the word the defendant is mentioned without clarifying whether it is defendant no. 1 or 2. Further he submits that Ld. Counsel for defendant is asking for setting aside the order dated 04.06.2025 whereas mentioning the details in the application of order dated 13.08.2025 in para 5 of the application without any rhyme or reason. Ld. Counsel for plaintiff submits that on the last date of hearing i.e. 13.08.2025 the matter was received in this Court by way of transfer and the observations/ directions were made by this Court for her Ahlmad and Reader and not for the predecessor Ahlmad or Reader.

Ld. Counsel for plaintiff further submits that there are many counsels in the law firm who has filed vakalatnama on behalf of the defendants. It is not clarified in the application whether the medical emergency was faced by all the Counsels representing the defendants or any particular Counsel. It is submitted that the application is vague.

Heard. Record perused.

There is no medical document enclosed alongwith the application of any of counsels representing the defendants. Perusal of the vakalatnama shows that the law firm with the name of Babbar and Associates is representing the defendants. The vakalatnama bears the signatures of four Counsels on behalf of the defendants. At this stage, Ld. Counsel for the plaintiff submits that the medical condition was not such

that Counsel had to take medical opinion of any doctor. On inquiry whether he has filed any affidavit about his medical condition, he submits that he will file the same within two days.

Further, perusal of the record shows that the matter pertains to the year 2009 despite which on one pretext or the other at the instance of the defendants, adjournment has been caused. None of the four Counsels who have signed the vakalatnama on behalf of the defendants appeared on 04.06.2025, when the Ld. Predecessor was pleased to proceed exparte against the defendants. It is not the case that all the Counsels simultaneously had developed a medical emergency. The approach of the defendants is very lackadaisical. Still taking a lenient view and as last and final opportunity, the present application is allowed and the exparte proceedings dated 04.06.2025 is set aside subject to costs of Rs. 30,000/- imposed upon both the defendants, out of which 50% amount shall be deposited in the Advocate Welfare Fund and remaining 50% amount shall be given to the plaintiff on or before the next date of hearing against receipt. It is clarified that the defendants shall not seek any adjournment on any of the date fixed by the Court as the matter pertains to the year 2009.

Ld. Counsel for the defendants submits that the application under Order 8 Rule 1 CPC has already been allowed while the earlier exparte order was set aside by the Ld. Predecessor subject to costs of Rs. 3000/- which he is paying today to the Ld. Counsel for plaintiff. Ld. Counsel for

the defendants has today made payment of costs dated 04.06.2026 to the Ld. Counsel for plaintiff in the Court. The WS filed by the defendants is taken on record subject to payment of costs imposed today.

Put up for filing replication, if any by the plaintiff for 18.10.2025.

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/14.10.2025