

IN THE COURT OF SHRI ASHWANI KUMAR SARPAL
PRINCIPAL DISTRICT & SESSIONS JUDGE, NORTH EAST
DISTRICT, KARKARDOOMA COURTS, DELHI.

CS NO. 424/2024

Smt. Vinita

..... Plaintiff

Versus

Smt. Usha & Anr.

..... Defendants

Date of institution of case : 30.11.2024

Date of decision : 11.12.2025

(Suit for recovery under Order 37 CPC)

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JUDGMENT :

1. Hon'ble Delhi High Court in case **Dilshad Khan vs. Government of NCT of Delhi 2025 SCC Online Del 5636** held that the condonation under Section 5 of the Limitation Act can be granted only in exceptional cases involving short delays but applicant has to establish his bonafide, absence of negligence and there is lack of prejudice to the opposite party.

2. Plaintiff is the Bhabhi of both the defendants who are the real sisters. Some matrimonial/family dispute took place between the parties and a settlement dated 11.07.2022 was arrived at. As per this settlement, both the defendants had to pay Rs. 9 Lakhs to the plaintiff. This payment was made by issuing two cheques of Rs. 4,50,000/- each to the plaintiff. However, one of the cheque bearing no. 000060 dated 24.09.2022 of Rs. 4,50,000/- issued by defendant no. 1 Smt. Usha drawn on Kotak Mahindra Bank, Vikas Puri branch was dishonored on the ground of insufficient funds on 30.09.2022. Plaintiff instituted complaint case under Section 138 N.I. Act against defendant no. 1 being the drawer of the cheque and ultimately filed the present suit for recovery under Order 37 CPC on 30.11.2024.

3. Vide order dated 05.12.2024, my ld. Predecessor directed for issuing of summons on prescribed format under Order 37 CPC to the defendants and adjourned the matter to 30.01.2025. Record shows that the summons sent through speed post on 10.12.2024 were served upon both the defendants on 11.12.2024 and 12.12.2024 respectively as per track reports downloaded from website of the postal department. The summons sent to defendants through process server were served on 17.12.2024 and 23.12.2024 respectively as per reports received. The summons issued to defendant no.1 was received by her husband whereas son of the defendant no. 2 received the summons from process server.

4. Defendant no. 2 did not file any appearance application at all whereas defendant no. 1 filed the same in the court on 08.01.2025. Defendant no. 1 subsequently filed an application under Section 5 of the

Limitation Act for condonation of delay in filing the appearance on 26.07.2025. On the other hand, plaintiff filed an application for decree of the suit due to absence of any appearance filed by defendant no. 2 as well as delayed appearance filed by defendant no. 1.

5. The law requires that the defendant is required to file appearance in the court within 10 days of the receipt of the summons in the suit under Order 37 CPC otherwise the averments made in the plaint are deemed to be admitted. However, the court is competent to allow late filing of appearance subject to showing sufficient cause by the defendant.

6. Defendant no. 1 in her appearance application dated 08.01.2025 has stated that she received the summons on 17.12.2024 and has filed her appearance on 08.01.2025 within the 10 working days but in subsequently moved application under Section 5 of the Limitation Act dated 26.07.2025, she alleged that after receipt of the summons on 17.12.2024, she reached alongwith her husband to Karkardooma courts on 28.12.2024 and contacted to her counsel telephonically, then she came to know that he had gone to his native place because of winter vacations and also came to know that the courts will open on 03.01.2025. Thereafter, she came to the Karkardooma Courts again on 07.01.2025, met her counsel and got prepared the appearance application which was filed in the court on next day. She tried to justify delay by saying that she was under impression that winter vacations will not be counted in limitation period as well as she was not aware of the legal proceedings and implications of non filing of appearance within prescribed period in case under Order 37 CPC. Plaintiff is seeking

condonation of delay of 12 days period through this application and in this regard, she relied upon the decision of Delhi High Court in case **M/s Lintas India Pvt. Ltd. vs. M/s Prasar Bharti 2023/DHC/000384** in which the Hon'ble Delhi High Court allowed condonation of delay of 43 days in filing appearance.

7. Defendant no. 1 is saying that she received the summons on 17.12.2024 through process server but she is not alleging anything about the service of summons by speed post on 11.12.2024. The service taken place through speed post on 11.12.2024 is established by way of tracking report and not a single word is alleged about this tracking report as incorrect or fake. The postal receipts and the tracking report cannot be disbelieved being issued by the public authority and are presumed to be correct and genuine. Hence, the plea taken by the defendant no. 1 that she received the summons only on 17.12.2024 is apparently a wrong stand whereas the fact is that she was already served with the summons of the suit on 11.12.2024.

8. The 10 days period for filing the appearance in the court had expired on 21.12.2024. The winter vacations started w.e.f. 25.12.2024 and thus, the defendant no. 1 had the option and opportunity to file appearance during the working days much prior to start of the winter vacations. Otherwise also, during winter vacations, Special Duty Judge used to hold courts to deal with urgent matters. Filing of appearance application which is a time bound action could have taken place even during winter vacations before Special Duty Judge but defendant no. 1 had not taken any such step

though she had gone to Karkardooma courts on 28.12.2024. Moreover, when the courts have already opened on 03.01.2025 after winter vacations, still she waited for five more days to file the appearance in the court on 08.01.2025. Defendant in her condonation of delay application did not even give the name of the counsel to whom she called on 28.12.2024 or at what phone number. In absence of such particulars, there exists no sufficient cause to condone the delay especially when counsel has not filed his own affidavit in support of this application that he was contacted by the defendant on 28.12.2024 and he informed her that he had gone out of station or had advised her to come after winter vacations. Thus, the submission of the defendant no. 1 that there was a delay of only 12 days in filing the appearance is incorrect and actually there was delay of 18 days. Defendant is trying to play fraud upon the court and has mislead the court with false averments.

9. Even when the defendant no. 1 had come to know that the courts would be opening on 03.01.2025 after winter vacations, then still no reason is given why she kept waited for four more days to contact her counsel for preparing and moving an application for appearance on 08.01.2025. Counsel for the plaintiff is here correct that defendant no. 1 had wasted virtually five days in this regard and there is no sufficient cause to condone the delay. All the above facts, otherwise also, do not show any sufficient cause to condone the delay even of 18 days when the defendant no. 1 tried to mislead the court by concealing the fact regarding first time service. The case law cited above by the plaintiff is distinguishable from the facts and circumstances of this case.

10. Counsel for plaintiff is justified to say that normally a litigant having common prudence visits the office of his counsel in the court complex after making a prior telephonic call to ascertain his availability. Here the defendant and her husband visited the court complex on 28.12.2024 without any prior telephonic call made to the counsel which conduct and behaviour does not appear to be normal specially keeping in view the fact that various litigations had taken place between the parties since the year 2016 and on number of times, they had visited the court complex to attend the hearings of different Courts, Mediation Cell, Lok Adalat etc. It cannot be believed that a litigant who frequently visits the court complex for several years does not know when the summer or winter vacations takes place. Accordingly, the plea taken by the defendant no. 1 that she visited the court complex on 28.12.2024 and then came to know that her counsel had gone to his native place during winter vacations is unacceptable and apparently a false plea. The non filing of application for condonation of delay alongwith appearance application dated 08.01.2025 and instead filing of the same subsequently on 26.07.2025 after a gap of more than six months draws a presumption that a concocted story has been setup to seek condonation of delay and to mislead the court as well as to conceal her own negligence and inaction. Allowing the condonation of delay application of defendant no. 1 will cause serious prejudice to the plaintiff. In such circumstances, I find no ground to condone any delay in filing appearance and thus, application moved by defendant on 26.07.2025 under Section 5 of the Limitation Act is dismissed and consequently, the application moved by the plaintiff dated 22.11.2025 for decree of the suit is allowed.

11. As the appearance was not filed within 10 days of mandatory period by the defendant no. 1 and there is no appearance at all of defendant no. 2, so the suit of the plaintiff is liable to be decreed straightway by holding that defendants are deemed to have admitted the averments of the plaint. A minor discrepancy in the amount mentioned in words and figure on the cheque in question is of no consequences when the settlement dated 11.07.2022 is clear which indicates the liability of both defendants being joint liability. This settlement alongwith the particulars of the cheque mentioned in it clarify everything and thus, it is held that the cheque amount actually was for Rs. 4,50,000/- as shown in the figures and mentioning of words as “Four Lakh Fifty only” is nothing but a clerical mistake.

12. When there is no appearance within 10 days in summary suit, then the plaintiff is only entitled to the interest upto the date of decree as per Order 37 Rule 2 (3) CPC and no future interest is allowed to be given to the plaintiff from the date of decree till recovery. In this regard, reliance can be also placed upon the decision of our own High court in case **Dolf Leading Ltd. vs. Vijay Cable Industries 2002 RLR 145**. The transaction between the parties was only a settlement of the family dispute, so the demand of the plaintiff for interest @ 18% per annum cannot be awarded being highly excessive and unreasonable.

13. Accordingly, the present suit is decreed and plaintiff is entitled to recover sum of Rs. 4,50,000/- from the defendants jointly or severally with interest @ 6% p.a. from 30.09.2022 when the cheque in question was

dishonoured till today. No future interest from the date of decision till recovery is allowed but plaintiff shall be entitled to recover the full cost of the suit. Decree be prepared and file be consigned to record room.

Dated : 11.12.2025.

**(ASHWANI KUMAR SARPAL)
PRINCIPAL DISTRICT & SESSIONS
JUDGE/NORTH EAST DISTRICT
KARKARDOOMA COURTS, DELHI**