

**IN THE COURT OF SH. RAJESH MALIK, ADDITIONAL
DISTRICT JUDGE -06: CENTRAL DISTRICT,
TIS HAZARI COURTS, DELHI**

Misc. No. 608/2022

IN THE MATTER OF:-

M/s Monk Trading Pvt. Ltd.
2/1, Chattarpur, M.G. Road,
New Delhi

.....Non-Applicant

VERSUS

Shri Ajit Kumar
S/o Late Shri Rajbir Singh
R/o Khasra No.30, Ground Floor,
Village Gadaipur, New Delhi

.....Applicant

Other Details :

Date of Institution	: 07.10.2022
Date of Reserving Order	: 19.10.2023
Date of Order	: 09.12.2023
Final Decision	: Application dismissed

APPLICATION UNDER ORDER 9 RULE 13 & SECTION 151 CPC
ON BEHALF OF APPLICANT AJIT KUMAR

ORDER:-

Ajit Kumar (Applicant) S/o Late Rajbir Singh:-

1. Ajit Kumar has filed the present application under Order. 9 Rule, 13 CPC to set aside the ex-parte judgment and decree dated 09.05.2022 in the Suit No. 615203/2016. He is the son of Late Rajbir Singh. Initially, he was not the defendant in the suit of possession bearing Civil Suit No. 615203/2016 filed by M/s Monk Trading Pvt. Ltd. However, after the death of his father namely Late Rajbir Singh, he was brought on record as the LR's of Rajbir Singh. Initially, his two brothers were the defendants in the suit.

Judgment/Decree dated 09.05.2022:-

2. By the Judgment and Decree dated 09.05.2022, the suit of M/s Monk Trading Private Limited for the relief of possession, permanent injunction and mesne profit was decreed in favour of M/s Monk Trading Private Limited (plaintiff). Late Rajbir Singh and his two sons were the defendants in the said suit as the defendants no. 1 to 3. During pendency of the suit, Shri Rajbir Singh, father of the applicant (Ajit Kumar) died and the application under Order. 22 Rule, 4 CPC was filed. Vide order dated 01.11.2021, the application under Order, 22 Rule, 4 CPC was allowed, thereby impleading Ajit Kumar (applicant) as one of the legal representatives of Late Rajbir Singh. After impleadment, Ajit Kumar did

not appear before the court. Thereafter, final arguments were heard from the contesting parties and the suit was decreed with observations that M/s Monk Trading Private Limited is entitled to recover the possession of the suit property from the defendant No.1 to 3 and the defendant no.1 to 3 were also restrained to encroach upon the suit property.

Application under Order. 22 Rule, 4 CPC:-

3. During pendency of the said suit for possession, an application under Order. 22 Rule, 4 CPC to bring on record the LRs of deceased defendant No.1 (Rajbir Singh) was filed. Notices of the said applications were issued to the LRs of the deceased defendant No.1 returnable on 25.03.2021.

4. On 25.03.2021, it was recorded in the ordersheet that LRs of Late Rajbir Singh were served with the notice of the application under Order. 22 Rule, 4 CPC, except the L.R namely Meenakshi. Perusal of the report on the notice under Order. 22 Rule, 4 CPC sent to Ajit Kumar shows that the same was received by Manish Singh on 22.03.2021. Manish Singh is also one of the LR of late Rajbir. He was also served with the notice of the application under Order. 22 Rule, 4 CPC. He received his summons himself. On 25.03.2021, neither Ajit Kumar nor Manish Singh appeared and the matter was adjourned for 07.07.2021.

5. On 07.07.2021, the matter was adjourned en-block due to Covid-19 for 14.12.2021.

An application for early hearing:-

6. Before 14.12.2021, the plaintiff moved an application for early

hearing. Notice of the said application was issued to all the defendants returnable on 18.09.2021. Perusal of the report on the said notice shows that notice of application of early hearing was also received by Manish Singh. He received the notice being his brother. Notice to other sons of Rajbir Singh was also received by Manish as all sons of Rajbir Singh were having the same address i.e. H.No. 501, M.G. Road, Village Ghitorni, New Delhi.

Appearance of Ajit Kumar on 18.09.2021:-

7. On 18.09.2021, the matter was taken up to hear the application of early hearing. On that day, the court recorded the presence of Ajit Kumar in its ordersheet. The ordersheet dated 18.09.2021 recorded by the Ld. Predecessor of this court is relevant and the same is reproduced here as under:-

“CS DJ 615203/16
MONK TRADING PVT. LTD.
Vs.
RAJBIR & ORS.

18.09.2021

Present: Sh. Ayush Gupta, Ld. counsel for P-1.
Sh. Deepender Singh, Ld. counsel for D-2 and D-3.
Sh. Manish, LR's of deceased Rajbir in person.
Sh. Satbir, **Sh. Ajit Kumar** and Sh. Manoj, LR's
of deceased Rajbir present in person.

As per the order no. 569/RG/DHC/2021, dated 19.08.2021, of Hon'ble High Court of Delhi as well as Circular No. DJ(HQ)/Covid Lockdown/Physical Courts Roster/2021, the matter is taken up for physical hearing for today.”

Notice with respect to Ms. Meenakshi (LR's of deceased Rajbir) has been issued, but not received back. Let a fresh notice be issued to Ms. Meenakshi for the next date of hearing on filing of PF.

Sh. Manish, LR's of deceased Rajbir seeks some time to engage a counsel. Adjournment sought.

In view of the same, matter stands adjourned. Be listed for further proceedings on **26.10.2021**.

(Jitender Singh)
ADJ-06, Central District
THC, Delhi/18.09.2021”

8. As reflected in the ordersheet dated 18.09.2021, Ajit Kumar appeared before the court and his attendance was accordingly marked. It is pertinent to note here that on 18.09.2021, the court did the physical hearing of the matter. Thereafter, on 01.11.2021, the application under Order. 22 Rule, 4 CPC was allowed, impleading Ajit Kumar as the defendant being the son of Late Rajbir Singh. On 01.11.2021, when the application under Order. 22 Rule, 4 CPC was allowed, Ajit Kumar was not present.

Submissions of the applicant to set aside the decree under Order. 9 Rule, 13 CPC:-

9. It is submitted by the applicant (Ajit Kumar) that the judgment/decreed dated 09.05.2022 was passed in his absence and therefore, this decree is liable to be set aside qua him under Order. 9 Rule, 13 CPC. It is submitted that he was not aware about the proceedings of the suit as his summons were received by his brother Manish, with whom he had strained relationship. He submits that he shifted from the address i.e. H.No. 501, M.G. Road, Village Ghitorni, New Delhi to the Khasra No. 30, Village Gadai Pur, New Delhi on the occasion of Diwali in the year 2014 and he got the electricity connection installed in his name on 11.03.2015. It is submitted that he was not residing in the H.No. 501, M.G. Road, Village Ghitorni, New Delhi as he was residing separately from his brother in the Khasra No. 30, Village Gadai Pur, New Delhi. He came to know about the decree only on 22.09.2022.

Submission of the plaintiff/respondent:-

10. The respondent submitted that the applicant (Ajit Kumar) has taken a false plea that he started residing in the Khasra No. 30, Village Gadai Pur, Delhi. It is submitted that in the year 2017, the Petition Crl. Misc. (M) No. 5153 of 2017 was filed by Ajit Kumar before the Hon'ble Delhi High Court, wherein he showed his address as H.No.501, M.G. Road, Village Ghitorni, New Delhi. It is submitted that why did he not disclose his address of Khasra No. 30, Village Gadai Pur, Delhi in the said petition when he had shifted to that place in the year 2014. In the said petition, the affidavit of Ajit Singh S/o Sh. Rajbir Singh was filed, wherein also he had mentioned his address as H.No. 501, M.G. Road, Village Ghitorni, New Delhi. It is further stated that the Aadhar Card of his wife carries the address of H.No. 501, M.G. Road, Village Ghitorni, New Delhi. It is submitted that he was aware of the present proceedings and the present application has been filed in order to delay the execution proceedings so that the plaintiff shall not get the possession of the suit property from the defendants.

Observations of this Court:-

Service through Manish Singh:-

11. Ajit Kumar was proposed to be impleaded as the LR of Late Rajbir Singh. His brother Manish Singh received the court summons twice on behalf of Ajit Kumar. As noted above, the attendance of Ajit Kumar had been written in the ordersheet dated 18.09.2021. Thereafter, he did not appear. He was impleaded as the L.R of Late Rajbir Singh vide order dated 01.11.2021. Thereafter, the decree was passed in the suit. He claimed that

he had shifted to H.No. 30, Village Gadai Pur, New Delhi in the year 2014 and therefore, he was not aware about the proceedings before the Ld. Trial Court. He avers that his brother Manish Kumar did not inform him about the suit because of strained relationship with him. However, he has not explained how his attendance was marked in the ordersheet dated 18.09.2021.

12. At this stage, it is relevant here to refer to the Section 114 of Indian Evidence Act, which says that the court may presume existence of certain facts. It says that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. The illustration (e) of the Section 114 of The Indian Evidence Act says that the court can presume that judicial and official acts have been regularly performed.

13. Recording a fact in the order-sheet is a judicial act. There is a strong presumption in favour of the ordersheet dated 18.09.2021 being a judicial order. The court can validly presume under Section 114 of Indian Evidence Act that the judicial proceedings make the record of fact occurs before the court. Undoubtedly, this presumption is rebuttable, but the onus to rebut this presumption is on the person who alleges that the judicial act has not been correctly performed. So, this court relies upon the section 114 of Indian Evidence Act to raise presumption that Ajit Kumar was present in the court on 18.09.2021. That was the reason that his name was recorded in the ordersheet. Until, this presumption is rebutted, no case is made out to observe that Ajit Singh was not aware about the proceedings of the Suit No. 615203/2016.

14. Further, having an electricity connection in his name at a different property does not mean that he was residing there. He mentioned in his application that he had the dispute with his tenant in respect of Property no. 30, Village Gadaipur, New Delhi. That dispute does not show that he was residing there. On the contrary, it may be inferred that his tenant was residing in the H.No. 30, Village Gadaipur, Delhi. Further, in year 2017, Ajit Singh filed an affidavit before the Hon'ble High Court in the Petition Crl. Misc. (M) No. 5153 of 2017, wherein he showed his address as H.No. 501, M.G. Road, Village Ghitorni, New Delhi. It is observed here that the address in the Aadhar Card can be changed at the request of holder of Aadhar Card and the applicant has not shown that he had got the same changed in the year 2015. There may be a possibility that the same was got changed after passing of the judgment and decree dated 09.05.2020.

15. Further, Order. 9 Rule, 13 CPC provides that the applicant has to satisfy the court that the summons were not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. It is further provided under Order. 9 Rule, 13 CPC that no court can set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had the notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

16. Reverting back to the facts of the present case, the applicant appeared before the Trial Court and was having sufficient time to take the defence appropriate to his character being a Legal heir, but he did not take

any step and lateron filed an application under Order. 9 Rule, 13 CPC. As a result, there are no merits in the present application. The applicant has made the averment that he was not aware of the case despite the fact that he appeared before the court on 18.09.2021. Accordingly, the present application stands dismissed with costs of Rs. 10,000/- to be deposited with Delhi Legal Services Authority (Central), Delhi.

17. File be consigned to the Record Room as per rules.

Announced in open Court
Dated: 9th December, 2023

(RAJESH MALIK)
Addl. District Judge-06 (Central),
Tis Hazari Courts, Delhi