

**IN THE COURT OF SH. DEVENDER KUMAR JANGALA
DISTRICT JUDGE -01: SOUTH WEST DISTRICT
DWARKA COURTS : NEW DELHI**

DLSW010014332025



**RCA DJ ADJ No. 19/25
Babita Vs. Sunil Kumar & Ors.**

SMT. BABITA
W/O SH. DAYANAND
R/O H. NO. 122 VILLAGE AMBERAHI,
DWARKA SECTOR-19, NEW DELHI

VERSUS

1. **SH. SUNIL KUMAR**
S/O SH. BHAGWAN SINGH,
R/O 124, VILLAGE AMBRAHI, S
SECTOR-19 DWARKA, NEW DELHI

2. **SH. SATBIR (SINCE DECEASED)**

2 A. SMT. PARKASHI
W/O LT. SH. SATBIR,

2 B. SH. KAMAL MAAN
S/O LT. SH. SATBIR,

2 C. ANJU
D/O LT. SH. SATBIR,

2 D. MANJU
D/O LT. SH. SATBIR,

ALL R/O H. NO 124, VILLAGE AMBRAHI,
SECTOR-19 DWARKA, NEW DELHI

3. **THE DEPUTY COMMISSIONER,**
SOUTH-DELHI MUNICIPAL CORPORATION,
NAJAFGARH ZONE, DHANSA BUS - STAND, DELHI-110027
 4. **THE SUB-DIVISIONAL MAGISTRATE,**
DWARKA, GOVERNMENT OF NCT OF DELHI,
OLD TAX TERMINAL BUILDING,
KAPASHERA, DELHI-110037
 5. **THE SHO,**
PS DWARKA SECTOR 23,
NEW DELHI
-RESPONDENTS

Date of Filing	:	17.02.2025
Date of Arguments	:	14.07.2025
Date of Judgment	:	30.07.2025

JUDGMENT

1. The present appeal has been filed under Section 104 CPC read with order 41 Rule 1 CPC against the order dated 08.01.2025 and 02.02.2023 passed by the court of Sh. Ajay Kumar Malik, Ld. ASCJ cum JSCC, South West District, Dwarka Courts, New Delhi in case titled as Smt. Babita Vs. Sunil Kumar & Ors, in misc. no.SCJ 185/24 in civil suit no.427277/16.

2. **Brief facts:** The plaintiff had filed a suit for permanent and mandatory injunction against the defendants/respondents. The appellant/plaintiff has alleged that the defendants no.1 had raised illegal constructions without obtaining any sanctioned plan from the competent authority. That the defendants no.1 and 2 had encroached upon the street in front of house of plaintiff. That the matter was reported to the police authorities, but no action was taken. That the plaintiff also made complaint to defendant no.3 MCD and defendant no.4 SDM Dwarka with respect to the said illegal construction but no action was taken.

Therefore the plaintiff approached the Ld. Trial Court with the suit of permanent and mandatory injunction.

3. Notice of the suit was issued to the defendants. The defendants put appearance before the Ld. Trial Court and contested the suit. During the course of trial vide order dated 02.02.2023 the suit was dismissed for non prosecution.

4. The present appellant/plaintiff filed appeal against the said order dated 02.02.2023. However, the appeal was dismissed as withdrawn on 29.05.2023 from the court of Ld. ADJ-02, South West, Dwarka Courts, Delhi, with liberty to file afresh before the competent court. The appellant/plaintiff thereafter filed an application under Order IX rule 9 CPC before the Ld. Trial Court, which was dismissed vide order dated 08.01.2025. The appellant being aggrieved by the order dated 08.01.2025 has filed the present appeal.

5. It is submitted by Ld.counsel for appellant that the impugned judgment/order passed by Ld. Trial Court is against the law and facts on record. That the impugned order suffer from non application of judicial mind. That the impugned order has been passed without going into the merits of the case and delivered the order only on conjuncture and surmises. That the Ld. Trial court has fails to appreciate that appellant has never appeared before the Ld. Trial Court and her first counsel had withdrawn his vakalatnama and the second counsel told that her appearance was not necessary. That the Ld. Trial court failed to appreciate that sufficient cause has been shown for non appearance before the Ld. Trial Court. That the Ld. Trial Court fails to consider the situations wherein the appellant could not appear before the Ld. Trial Court. That the impugned order passed by Ld. Trial Court is bad in law and against the

principle of natural justice. It is prayed that the impugned order dated 08.01.2025 and 02.02.2023 may kindly be set aside.

6. Notice of the appeal was issued to the respondents. Respondents put appearance and contested the appeal. It is argued that there is no illegality or infirmity in the impugned order passed by Ld. Trial Court. It is prayed that the appeal may kindly be dismissed.

7. I have considered the submissions made by Ld.counsel for appellant and Ld.counsel for respondents and perused the record.

8. The present suit was filed by the appellant/plaintiff on 06.06.2016. The plaintiff had appeared in person on many dates of hearing during the proceedings. The presence of the plaintiff on specific dates of hearing i.e. 22.08.2019, 16.04.2022 and 17.10.2022 are relevant to be considered. The plaintiff in the present case has levelled the serious allegations against her previous counsel regarding negligence in prosecuting the present matter. However, the perusal of the record reveals that the plaintiff also appeared in the matter and seems to be aware about the proceedings. It is not out of place to mention that on 22.08.2019, the plaintiff had agreed to deposit the amount for demarcation of the suit property but despite her undertaking, she had fails to comply with the same. It is also not out of place to mention that in the present case after dismissal of the suit vide order dated 09.02.2023, the plaintiff filed an appeal before the appellate court, which was dismissed as withdrawn on 29.05.2023 with liberty to file afresh before the competent court. The filing of the appeal itself shows that the plaintiff was aware about the dismissal of the

suit. However, the appellant/plaintiff again tried to blame her counsel that he had got her signatures on the false pretext.

9. The Hon'ble Supreme Court in recent case **Rajenessh Kumar & Anr. V.s Ved Prakash, 2024 INSC 891** has held that the litigants has to be vigilant and can not through entire blame for delay and negligence on his advocate. The Hon'ble Supreme Court further observed that the litigants should exercise due care and vigilance and can not throw the entire blame on their advocate. The Hon'ble Apex court has also flagged that there has been tendency on the part of litigants to blame their lawyers of negligence and carelessness in attending court proceedings.

10. I have also placed reliance upon the another judgment of Hon'ble Spureme court in case **Salil Dutta v. T.M. & M.C. Private Ltd. reported in (1993) 2 SCC 185**, wherein Hon'ble Apex Court observed as under:-

"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq AIR 1981 SC 1400 must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head

office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court.

May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted."

(Emphasis supplied)

11. The ratio of judgment of Hon'ble Apex Court in case **Rajenesh Kumar & Anr.(supra)** is squarely applicable to the facts of present case. In the present case the appellant/plaintiff despite her gross negligence and absence of due care and vigilance, attempted to throw entire blame on her advocate. In the present case the suit filed by the plaintiff was dismissed for non prosecution vide order dated 02.02.2023. Thereafter the appeal against the said order passed by the plaintiff was dismissed as withdrawn on 29.05.2023. However, the applicant/plaintiff remained silent and moved the application for restoration of the suit only on 20.07.2024. In view of above conduct of the plaintiff, I am of the considered opinion that the Ld. Trial Court is justified in dismissing the application under Order IX Rule 9 CPC moved on behalf of appellant/plaintiff. There are no merits in the appeal.

12. In view of aforesaid discussions, I am of the considered opinion that there is no illegality or infirmity in the orders passed by Ld. Trial Court. Therefore, the appeal filed against the the order dated 08.01.2025 and 02.02.2023 passed by the court of Sh. Ajay Kumar Malik, Ld. ASCJ cum JSCC,

South West District, Dwarka Courts, New Delhi in case titled as Smt. Babita Vs. Sunil Kumar & Ors, in misc. no.SCJ 185/24 in civil suit no.427277/16 is dismissed. Appeal file be consigned to record room and TCR be sent back to the concerned court alongwith the copy of this judgment.

DEVENDER KUMAR JANGALA
District Judge-01
South West, Dwarka Courts
30.07.2025