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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 804/2025, CM APPL. 26240/2025**
MAHESH ROHRA

.....Petitioner

Through: Mr. Shiven Banga, Mr. Rajeew Kapoor
and Mr. Ashish Garg, Advocates.

versus

KAVITA KUMAR & ORS.

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% **01.05.2025**

CM APPL. 26241/2025 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 804/2025

1. Petitioner, as a landlord, had filed a suit for possession, ejectment, injunction and recovery of outstanding amount towards “*use and occupation charges*”.
2. The written statements were filed by defendant Nos.1 and 2.
3. However, defendant Nos. 3 and 4 were directed to be served through affixation and since despite affixation they did not appear, they were proceeded against *ex-parte vide* order dated 22.10.2022.
4. In view of the written statements filed by defendant Nos. 1 and 2, the plaintiff moved an application under Order XII Rule 6 CPC. The learned Trial Court heard arguments on the aforesaid application and also on application

CM(M) 804/2025

1



moved under Order XXXIX Rule 10 CPC on 21.08.2023 and 10.11.2023 but fact remains that no order was pronounced and the matter was, merely, re-notified for 24.02.2024.

5. Fact however remains that in the interregnum, an application was moved by defendant No.4 under Order IX Rule 7 read with Section 151 CPC.

6. On 30.01.2024, such application was taken up by the learned Trial Court and a copy thereof was also supplied to the plaintiff and there was a direction that such application would be taken up on the next date of hearing for consideration.

7. The next date before learned Trial Court was 24.02.2024.

8. However, the plaintiff, themselves, moved an application on 05.01.2024 seeking pre-ponement of the abovesaid date.

9. The same order dated 30.01.2024, records that since the arguments had already been heard on the application moved under Order XII Rule 6 CPC, the date was pre-poned and the matter was fixed for orders on said application moved under Order XII Rule 6 CPC on the same day at 4:00 P.M.

10. Ideally, since an application had already been moved by one of the defendants, seeking to set aside *ex-parte* order, and since such defendant was also duly represented before the Court that day, the learned Court should not have acted in haste and should not have, by pre-poning the date, passed decree with respect to possession same day. Such order has, obviously, caused prejudice to defendant No.4 as well.

11. So much so, pursuant to such decree, the plaintiff has also got back the possession of the suit premises.

12. It is apprised that defendant Nos.1 and 2 challenged the decree by filing a *Regular First Appeal* before this Court but such appeal has been *dismissed*



in default on 17.12.2024.

13. Learned counsel for the plaintiff/ petitioner submits that since the decree has been passed, ideally speaking, defendant No.4 should have filed application under Order IX Rule 13 CPC, instead of, merely seeking to set aside the *ex-parte* order dated 22.10.2022. However, such contention does not cut any ice as the learned Trial Court should not have acted with any tearing hurry and should have given chance to defendant No.4 to advance arguments, before passing any decree. Moreover, when she had filed said application, there was no decree in the matter at all.

14. So far, defendant No.4, it seems, has not made any request seeking relief of restoration of the possession.

15. Issue notice to the respondents through all permissible modes, returnable on 07.08.2025. Notice be also issued through counsel.

MANOJ JAIN, J

MAY 1, 2025/ss/pb