



\$~46

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 146/2025**

**SAILESH ASTHANA**

.....Appellant

Through: Mr. Biswajit Swain, Mr. Arshad  
Khan, Ms. Razia Sultana, Advs.

versus

**UMARTH DEVELOPERS PVT LTD**

.....Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

% **22.05.2025**

1. The hearing is being conducted through hybrid mode.

**CM APPL. 31554/2025 – EXMP.**

2. Allowed, subject to all just exceptions.

3. The application stands disposed of.

**FAO 146/2025 and CM APPL. 31553/2025 – STAY**

4. The appellant is preferring this appeal under Order XLIII Rule 1(D) read with Section 151 of the Code of the Civil Procedure, 1908 [**'CPC'**] assailing the impugned order dated 22.02.2025 passed by the learned District Judge-03, South District, Saket Courts, New Delhi, [**'Trial Court'**] whereby his application under Order IX Rule 13 read with Section 151 CPC for setting aside *ex-parte* judgment and decree dated 26.02.2018, has been dismissed.

5. No one is present for the respondent, despite sending advance notice.

6. It appears that a suit was instituted on 08.03.2016 by the

This is a digitally signed order. respondent/plaintiff seeking recovery of amount of Rs. 86 lakhs

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 23/05/2025 at 13:02:04



initially under Order XXXVII of the CPC claiming that a friendly loan was advanced to the appellant/defendant which remained unpaid, so much so that the cheques issued towards the repayment were dishonoured, which led to the filing of several complainants under Section 138 of the Negotiable Instruments Act, 1881 [**'N.I. Act'**].

7. The appellant/defendant was proceeded *ex-parte vide* order dated 28.11.2016 for non-appearance despite the service of summons by way of publication in the newspaper 'Times of India'.

8. Learned counsel for the appellant has alluded to the observations of the learned Trial Court contained in paragraph (08) of the impugned order, that would evidently show that summons was initially sent at four addresses and the notices were returned unserved with the remarks that 'defendant were not residing at any of such addresses'. Although, it appears that notices were ordered to be issued afresh, an application under Order V Rule 20 of the CPC was moved, which led to the learned Trial Court directing issuance of notice to the appellant/defendant by way of publication.

9. Learned counsel for the appellant has urged that the appellant has otherwise been duly appearing in the proceedings instituted under Section 138 of the N.I. Act and deliberately wrong addresses were supplied in order to visit the appellant with this *ex-parte* decree.

10. On a further perusal of the contents of paragraph (09) onwards, it does appear that there are certain issues that requires deeper examination. The bottom line is that *prima facie* it appears that appellant/defendant was not duly served with the summons of the suit under Order XXXVII of the CPC which was later converted into an ordinary suit.

*This is a digitally signed order.*

*The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.*

*The Order is downloaded from the DHC Server on 23/05/2025 at 13:02:04*



11. Issue notice of the present appeal to the respondent, on filing of PF, by all permissible modes including *via* approved courier as well.
12. In the meanwhile, the execution of the impugned judgment and decree shall remain in abeyance.
13. Re-notify on 08.10.2025.
14. A copy of this order be given *dasti*.

**DHARMESH SHARMA, J.**

**MAY 22, 2025/sp**

*This is a digitally signed order.*

*The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.*

*The Order is downloaded from the DHC Server on 23/05/2025 at 13:02:04*