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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 208/2025, CM APPL. 44959/2025, CM APPL. 44960/2025**

RAJIV GAMBHIRAppellant
Through: Mr. Kartik Bhardwaj, Advocate.

versus

GULJEET SINGH AND ORSRespondents
Through: Mr. Kunal Madan, Mr. Shyam Babu,
Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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18.02.2026

1. The present appeal has been instituted under Section 104 read with Order 43 Rule 1(d) CPC seeking setting aside of the order dated 17.05.2025 passed by the learned DJ-03, West District, Tis Hazari Courts, *Delhi* in Application bearing no. Misc. DJ 585/2024 in Suit bearing no. CIV DJ 620/2020, *vide* which the application under Order 9 Rule 13 CPC filed by the appellant (defendant no. 2 before the Trial Court) came to be dismissed.
2. Notably, the impugned order was passed in the context of a suit for permanent and mandatory injunction and damages filed by respondent no. 1 (plaintiff before the Trial Court), wherein it was claimed that the plaintiff is a senior citizen residing on the ground floor of the property bearing no. 17/6, *West Patel Nagar, New Delhi – 110018* (hereinafter the “suit property”). Defendant no. 1, the brother of the plaintiff and co-owner of the suit property, was in possession of the first floor and had rented it out to defendant no. 2. Defendant no. 3 is claimed to be the driver of defendant



no.2.

3. The underlying suit was filed with the grievance that defendant nos. 1 to 3 had started illegal construction on the first floor of the property without seeking sanction, on account of which extensive water leakage had occurred. It was averred that the seepage had affected the entire ground floor, resulting in plaster coming off the walls and a continuous bad odour in the house. It was also stated that the seepage had caused leakage of current in the electrical fittings of the rooms. The plaintiff also claimed that the defendants had been encroaching upon his parking area and obstructing his ingress and egress.

4. On summons being issued, only defendant no. 2 appeared and filed his written statement. None of the other defendants appeared in pursuance of the summons issued. However, a perusal of the record reveals that the Trial Court, on continued non-appearance by defendant no. 2, proceeded *ex-parte* against him *vide* order dated 08.06.2022, and eventually an *ex-parte* decree in the suit came to be passed on 03.11.2023.

5. While assailing the impugned order, learned counsel for the appellant contends that defendant no. 2 was misled by his counsel, due to which he could not appear; however, despite providing sufficient reasons, the Trial Court passed the impugned order without appreciating the same. It is further contended that the appellant became aware of the *ex-parte* decree only on 07.05.2024, when summons in the execution petition were received by him and, as such, delay, if any, was only 123 days, which also stood sufficiently explained in the application filed under Section 5 of the Limitation Act, 1963.

6. The above contentions are vehemently opposed by the learned



counsel for the respondents, who contends that not only was there a gross and inordinate delay in approaching the Trial Court, but the reasons provided for non-appearance are also whimsical and false on the face of it. Learned counsel further submits that defendant no. 2 failed to appear before the Trial Court on multiple dates and also concealed the factum of having approached this Court *vide* FAO 35/2022 against an interim order dated 27.10.2021 passed by the Trial Court, whereby the defendants were restrained from obstructing the ingress and egress at the ground floor of the suit property and were further directed to remove the parked vehicle. The said appeal came to be decided on 25.02.2022 and, as such, the stand of defendant no. 2 that it was not aware of the proceedings, is belied.

7. The impugned order records that defendant no. 2 stopped appearing from 10.02.2022, whereafter he did not appear on 20.04.2022 as well as on 08.06.2022, when the *ex-parte* order came to be passed. Indeed, though in the application filed under Order 9 Rule 13 CPC defendant no. 2 took the ground that his counsel had not informed him of the proceedings; however, on a perusal of the order passed in FAO 35/2022, it appears that defendant no. 2 had engaged multiple counsels. The said FAO came to be disposed of on 25.02.2022, in the presence of counsel for defendant no. 2. Defendant no. 2, at the same time, was not appearing before the Trial Court either prior to the aforesaid date or even thereafter.

8. Further, this Court finds strength in the submission of the learned counsel for the respondents that defendant no. 2 deliberately did not mention, in the present proceedings, the factum of filing the aforesaid FAO, and its dismissal or the decision.

9. In light of the above stated facts, it cannot be said that defendant no. 2



was not aware of the pendency of the Trial Court proceedings, as the stand taken is false and presumptuous. Even the actual delay in filing the said application is much more than claimed. Blaming a counsel *simpliciter* would not absolve the party from its own due diligence, especially when it is simultaneously pursuing other remedies out of the same very proceedings.

10. During the course of submissions, learned counsel for the appellant submitted that defendant no. 2 had already vacated the premises; however, at the tail-end of his submissions, learned counsel for the appellant attempted to argue that the plaintiff had selectively filed the execution petition against defendant no. 2, which is pending; however, this aspect is not to be urged before this Court, considering the scope of the present appeal.

11. Finding no ground in the present appeal, as the appellant has failed to show sufficient reasons to grant the prayer, the impugned order is upheld and the appeal is dismissed.

12. The present appeal, along with pending applications, is disposed of in the above terms.

MANOJ KUMAR OHRI, J

FEBRUARY 18, 2026

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