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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ C.R.P. 3/2018, CM APPL. 319/2018

BHARTIYA VIDYA PUBLIC SCHOOL Petitioner

Through: Mr.N.K.Jha, Advocate

versus

RAJBALA & ORS Respondents

Through: None.

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Date of Decision: 13th September, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed challenging the order dated 08.12.2017 whereby the application of the respondent for setting aside *ex parte* order has been allowed.
2. Learned Counsel for the petitioner submits that the impugned order of learned Trial Court is totally wrong as the respondents failed to show any sufficient case for setting aside the *ex parte* decree.
3. Learned Counsel has further submitted that the application was also filed at a belated stage and therefore in absence of any application for condonation of delay, the *ex parte* order could not have been set aside.
4. Learned Counsel has relied upon the judgments :-



- i. Satya Infrastructure Ltd. & Ors. Vs. Satya Builders Pvt. Ltd., 225 (2015) Delhi Law Times 234.
 - ii. Sweety Gupta Vs. Neety Gupta & Ors., 2016 (160) DRJ 93 [DB].
 - iii. Rajan Mehra Vs. Geetanjali Mehra, 232 (2016) Delhi Law Times 108 (DB).
5. It has been submitted that defendants / respondents has miserably failed to discharge onus placed on them by satisfactorily demonstrating to the court that it was prevented by a sufficient cause from appearing the suit when it was called on for appearing.
6. I have considered the submissions and perused the record. The revisional jurisdiction as provided under section 115, CPC is very limited. In the revisional jurisdiction the court can exercise its jurisdiction only if the Sub-ordinate Court appears:
- (i) To have exercised a jurisdiction not vested in it by law; or
 - (ii) To have failed to exercise a jurisdiction so vested, or
 - (iii) To have acted in the exercise of its jurisdiction illegally or with material irregularity.
7. In the present case, the learned Trial Court had recorded the finding that the summons were duly served upon the respondent on 16.08.2016 and defendant no. 2 had been appearing with Counsel till 04.11.2016.
8. The defendant could not file the written statement till 20.02.2017 and therefore the opportunity to file written statement was closed and



were proceeded *ex parte* on 10.03.2017 and an *ex parte* decree was passed on 11.05.2017. Learned counsel has submitted that for the period 04.11.2016 to 11.05.2017 the defendant did not make any effort to join the proceedings even though they were earlier aware of the next date of hearing. However, the learned Trial Court taking into account the facts and circumstances of the case took a view *ex parte* decree was set aside subject to the cost of Rs.1,000/- each upon the respondents.

9. The Order 9 Rule 13 CPC provides a remedy for the defendant to apply to set aside the ex-partes decree which was passed due to the non-appearance of the defendant in the civil suit.
10. In the present case, it is not the case of the parties that the summons were not served upon the respondents. The summons were duly served upon the respondents and they have also appeared, thereafter they stopped appearing before learned Trial Court. The learned Trial Court was the best judge to ascertain the reasons for their non-appearance. The parties were not appearing before the learned Trial court and a view was taken that they might have stopped appearing being an illiterate person. The satisfaction of the court is paramount. It is also a settled proposition that the procedure is the handmaid of justice. The earnest endeavor of the courts are to adjudicate the matter finally. Even the *ex parte* decrees in some cases may not be executed particularly in the present case wherein it has been alleged that the respondents have illegally grabbed some land behind the school and they have stopped / blocked the emergency gate of the



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school. I consider that it would be in the overall interest of the parties that the matter is finally adjudicated after hearing both the parties.

11. In the revisional jurisdiction this court cannot set aside a view only because a particular view has been taken by the Trial Court. The Trial Court in his wisdom has taken a view and has set aside *ex parte* order. It is not the case where either the jurisdiction has been misused or the jurisdiction has been exercised which was not vested in the Trial Court.
12. I do not see any illegality or perversity in the order of the learned Trial Court.
13. Hence, the present revision petition alongwith the pending application stands dismissed.

DINESH KUMAR SHARMA, J

SEPTEMBER 13, 2022/sk

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