

**(2025) 12 DEL CK 0017**

**Delhi HC**

**Case No:** FAO No. 498 Of 2017

Naresh Sukhdev Sindhe

APPELLANT

Vs

Seema Baweja & Anr

RESPONDENT

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**Date of Decision:** Dec. 5, 2025

**Acts Referred:**

- Code of Civil Procedure, 1908- Section 104, Order 9 Rule 9, Order 42 Rule 1
- Negotiable Instruments Act, 1881- Section 138

**Hon'ble Judges:** Chandrasekharan Sudha, J

**Bench:** Single Bench

**Advocate:** Karan Luthra, Yogesh Malik, S A Khan

**Final Decision:** Allowed

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**Judgement**

Chandrasekharan Sudha, J

1. The present Appeal under Order XLII Rule 1 read with Section 104 of the Civil Procedure Code, 1908, (the CPC) assails the correctness of the orders dated 19.10.2016 and 28.08.2017 in Civil Suit No. 609215/2016 on the file of the learned ADJ, West Delhi, Tis Hazari Courts.. The trial court, vide order dated 19.10.2016, dismissed the plaintiff/appellant's suit for declaration and injunction for default. Thereafter, the application for restoration under Order IX Rule 9 CPC, along with application for condonation of delay was also dismissed by the trial court vide order dated 28.08.2017.

2. In this appeal, the parties herein shall be referred to in the same rank as they are arrayed in the original suit.

3. Brief facts necessary for the adjudication of this appeal are as follows:- The suit was posted for arguments on the issue of maintainability on 19.10.2016. On the said date, neither the plaintiff nor his counsel was present in the court, even though the case was called multiple times. Hence, the trial court proceeded to dismiss the suit for non-prosecution. Subsequently, the plaintiff filed an application for restoration under Order IX Rule 9 CPC, along with an application for condonation of delay, explaining that on the said day he was required to appear in a proceedings under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act), which was filed by defendant no. 1 against him, which prevented his presence before the trial court. The trial court vide the impugned order dated 28.08.2017, dismissed both the applications holding that the plaintiff was negligent and that the delay has not been satisfactorily explained.

4. Aggrieved, the plaintiff has approached this court, challenging the impugned orders dated 19.10.2016 and 28.08.2017.

5. The learned counsel for the plaintiff/appellant contends that defendant no.1 has instituted the criminal proceedings under section 138 of the NI Act, registered as CC. No. 2732/1, P.S. Hari Nagar, pending before the learned Metropolitan Magistrate, and that both the said NI Act proceedings and the present Civil Suit were coincidentally listed on the same date, i.e., on 19.10.2016. The learned counsel urged that the owing to the penal consequences associated with the non-appearance in the NI Act proceedings, the plaintiff and the counsel for the plaintiff was constrained to remain present before the Magistrate Court.

5.1. The learned counsel would also contend that the plaintiff, apprehending the difficulty in attending the civil court on the said date, had moved an application on 06.09.2016 before the trial court seeking an exemption from personal appearance. The learned counsel submits that this act of the plaintiff shows the bona fide conduct of the plaintiff and negates any suggestion of negligence.

5.2. The learned counsel for the plaintiff/appellant would further submit that the non-appearance of the plaintiff was neither wilful nor deliberate, but the result of two simultaneously listed proceedings coupled with the earlier counsel's lapse, and that the plaintiff had otherwise been regularly attending the suit proceedings, having appeared on the earlier dates, i.e., 16.07.2016, 06.08.2016. and 26.08.2016. The learned counsel submits that in these circumstances, the dismissal of the suit for default and the subsequent rejection of the restoration application warrant interference, particularly as no prejudice would be caused to the respondents if the matter is restored.

6. Per contra, the learned counsel for the defendant/respondent supports the impugned orders and would submit that the plaintiff cannot take shelter behind the alleged lapse of his counsel, as both the party and the counsel are expected to remain vigilant. The learned counsel would further argue that the plaintiff/appellant has not demonstrated any sufficient cause for his non-appearance on 19.10.2016. It was submitted that even if the plaintiff/appellant had to be present before the Metropolitan Magistrate Court in the NI Act proceedings, there was ample time thereafter to appear before the civil court, particularly when both courts are situated within the same complex. The plaintiff's complete absence throughout the day, according to the respondents, reflects negligence rather than bona fide difficulty.

7. Heard both sides and perused the records.

8. The principal issue that falls for determination is whether the plaintiff has shown "sufficient cause" for his non-appearance on 19.10.2016 so as to warrant restoration of the suit under Order IX Rule 9 CPC, and whether the delay in filing the restoration application deserves to be condoned.

9. It appears undisputed that on 19.10.2016, the plaintiff was present in the complex of Tis Hazari Courts in connection with the NI Act proceedings instituted by defendant no. 1. It is also evident from the record that the NI Act proceedings and the present civil suit were in fact listed on the same date. Perusal of the order dated 19.10.2016 passed in CC No. 2732/1, placed on record, shows that the plaintiff/appellant was present before the Metropolitan Magistrate Court in the forenoon, and the matter was adjourned to 04.01.2017 as the record corroborates the plaintiff's assertion that he was engaged before the Magistrate Court on the said relevant date.

10. The trial court, while dismissing the suit, noted that neither the plaintiff, nor his counsel appeared despite repeated calls. However, the materials on record clearly indicate that the plaintiff/appellant had, well in advance, moved an exemption application dated 06.09.2016, appraising the court of the difficulty arising from the simultaneous listing of two matters, which demonstrates the bona fide conduct of the plaintiff.

11. Turning to the aspect of delay, according to the plaintiff/appellant, he was unable to reach and connect with his earlier counsel to know about the status of the proceedings and the suit having been dismissed on 19.10.2016. Upon learning from the counsel for the defendant about the dismissal of the suit, he applied for certified copies on 25.10.2016 and received the same on 05.11.2016. Thereafter he approached the Legal Aid Cell for representation. The restoration application was filed through the legal aid counsel.

12. The suit was dismissed on 19.11.2016. The application for restoration is seen to be filed on 19.12.2016, i.e., beyond the prescribed limitation period of 30 days. In these circumstances, the delay cannot be termed inordinate or unexplained.

13. In the aforesaid circumstances, this Court is of the view that the plaintiff has demonstrated sufficient cause for non-appearance on 19.10.2016 and has satisfactorily explained the delay in filing the restoration application.

14. Accordingly, the appeal is allowed and the impugned orders dated 19.10.2016 and 28.08.2017 are set aside and CS No. 609215/2016 is restored to its original number to be proceeded in accordance with law.

15. It is clarified that nothing contained in this order shall affect the merits of the case.

16. Application(s), if any, pending, shall stand closed.