Neutral Citation No. - 2023:AHC:243097

A.F.R.

Court No. - 90

Case :- FIRST APPEAL FROM ORDER No. - 172 of 2022

Appellant :- Rakesh Kumar Jain
Respondent :- Zulfkar Ali
Counsel for Appellant :- Ishir Sripat,Devendra Singh,Sr. Advocate
Counsel for Respondent :- Pravindra Singh,Ashish Singh,Devendra Singh,Jitendra Shanker Pandey,Mohd. Akbar Shah Alam Khan,Neha Khan,Pravindra Singh,Satya Dheer Singh Jadaun,Virendra Singh

Hon'ble Dinesh Pathak,J.

1. Heard Sri Rahul Sripat, learned Senior Advocate assisted by Sri Ishir Sripat, learned counsel for the appellant and Sri Virendra Singh, Ms. Neha Khan and Sri Jitendra Shanker Pandey, learned counsel for the sole respondent and perused the record.

2. The appellant has preferred instant First Appeal From Order assailing the order dated 10.12.2021 passed by Additional District and Sessions Judge, Court No. 3, Muzaffar Nagar rejecting the restoration application moved by him under Order 9 Rule 13 read with 151 C.P.C., registered as Misc. Case No.17 of 2011, against the ex-parte judgment and decree dated 13.11.2009 passed by Additional District Judge, Court No. 5, Muzaffar Nagar in Original Suit No. 684 of 2008 (Zulfkar Ali Vs. Rakesh Kumar Jain).

3. Facts culled out from the record are that Zulfkar Ali (plaintiff-respondent) has filed suit dated 14.7.2008 for permanent prohibitory injunction against the defendant-appellant to restrain him not to interfere in the peaceful possession of the plaintiff over the property in question shown by letters ABC at the foot of the plaint and also not to dismantle the construction exists over there. The plaintiff came with the case that to secure the money borrowed from the defendant-appellant, document of understanding has been executed on 17.1.1994. At later stage, the plaintiff

returned all the money as borrowed from the defendant-appellant, however, now the defendant is trying to dispossess the plaintiff from the property in question. During pendency of the suit, the plaintiff has moved an amendment application dated 23.3.2009 seeking additional relief of cancellation of the registered sale deed dated 2.2.1994 and to declare it as null and void. Aforesaid amendment application was allowed on 8.4.2009. Suit was proceeded ex-parte, vide order dated 11.12.2008, against the defendant-appellant. In the meantime, case was transferred to the Court of Additional District Judge, Court No. 5 on 28.1.2009 and the record was received in the transferee court on 30.1.2009. In absence of the defendant-appellant, suit was ex-parte decreed by judgment and decree dated 13.11.2009. When the defendant/appellant came to know this fact, he moved a restoration application dated 12.09.2011, being Misc. Case No.17 of 2011, under Order IX Rule 13 read with Section 151 C.P.C. Having considered the full knowledge of pendency of suit to the defendant-appellant through his wife, learned trial court, vide order under challenge dated 10.12.2021, has dismissed the restoration application.

4. Learned counsel for the defendant-appellant submits that initially delay was condoned vide order dated 12.09.2011, however, observation with regard to delay condonation was quashed by order dated 08.12.2011 passed by this Court and parties were relegated before the trial court to decide the delay condonation matter afresh. Learned trial court has illegally declined to condone the delay for want of separate formal application for the condonation of delay under Section 5 of the Limitation Act and knowledge of pendency of suit to the defendant-appellant through his wife Shobha Jain, which has been tried to be established illegally based on report of Court Amin dated 22.07.2008. It is further submitted that Court Amin has simply completed the table work. Even otherwise, the provisions as enunciated under Order V Rule 17 C.P.C. has not been complied with in its letter and spirit. Property in question, which is a subject matter of sale deed dated 02.02.1994, has illegally been usurped

by the plaintiff-respondent by getting ex-parte decree passed in his favour, that too, by way of amendment of pleading at a very belated stage for cancellation of sale deed dated 02.02.1994 which, in fact, was not maintainable and to that extent relief for cancellation of sale deed was barred by time. It is further submitted that even at later stage, when the case was transferred from regular court, vide order dated 28.01.2009, and received in the transferre court on 30.01.2009, no fresh notice has been issued to the parties, particularly to the defendant, as required under Rule 89 of General Rule Civil. Prayer for condonation of delay has already precisely been made in prayer clause to the restoration application, therefore, no separate formal application for condonation of delay under Section 5 of the Limitation Act is required. In support of his submission, learned counsel for the applicant has relied upon the judgment of the Apex Court in the case of **Sesh Nath Singh vs. Baidhyabati Sheoraphuli Cooperative Bank Ltd.** reported in **AIRONLINE 2021 SC 161**. Learned counsel for the appellant has emphasized as well on the observations made by the learned trial court, while rejecting the restoration application, with respect to title of the parties and submits that learned trial court has exceeded its jurisdiction by giving an observation qua merits of the case of plaintiff-respondent. Lastly, it is submitted that the conduct of the defendant-appellant is bonafide who has been deprived of his property owing to ex parte decree passed against him and restoration application has illegally been rejected on technical grounds. Thus, instant appeal may be allowed and the order impugned passed by the trial court may be quashed being illegal and unwarranted under the law.

5. Per contra, learned counsel for the plaintiff-respondent has contended that the defendant-appellant had full knowledge about pendency of the suit which is evident from the report submitted by the Court Amit, wherein wife of defendant-appellant has refused to accept the notice, therefore, proper steps for affixing notice at the front of house of the defendant-appellant and obtaining signatures of two witnesses has

been completed by the Court Amin as required under the law. It is further contended that when the order dated 11.12.2008 has been passed for ex parte proceeding, there was no occasion to issue fresh notice to the defendant-appellant after transfer of case, vide order dated 28.01.2009, to the court of Additional District Judge, Court No.5, Muzaffar Nagar. It is further contended that Shobha Jain has never appeared and not filed his personal affidavit to corroborate the story of defendant-appellant qua absence of knowledge about pendency of suit. It is next contended that learned trial court has rightly declined to condone the delay for want of proper application under Section 5 of the Limitation Act inasmuch as without separate formal application with the prayer to condone the delay, the court has no jurisdiction to entertain the prayer of litigant for condoning the delay. In support of his contention, learned counsel for the plaintiff-respondent has placed reliance upon the case of **Sneh Gupta vs. Devi Sarup and Others** reported in **(2009) 6 SCC 194.** Supporting the judgment passed by the trial court, learned counsel for the plaintiff-respondent has urged to dismiss the instant F.A.F.O. being misconceived and devoid on merits.

6. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, it is manifested that learned trial court has rejected the restoration application under Order 9 Rule 13 read with Section 151 C.P.C. treating the service sufficient upon the defendant-appellant in O.S. No.684 of 2008 on the basis of report dated 22.07.2008 (Paper No.14-C) submitted by court Amin. Learned trial court, vide its ex-parte judgement and decree dated 13.11.2009, has decreed the suit (O.S. No.684 of 2008) filed on behalf of plaintiff-respondent for the relief to declare the registered sale deed dated 02.02.1994 to be null and void and also for permanent prohibitory injunction restraining defendant-appellant not to interfere in the peaceful possession and title of the plaintiff over the property in question shown by letters A, B and C at the foot of the plaint. Against ex-parte judgement dated 13.11.2009, at belated

stage, restoration application dated 12.09.2011 has been filed on behalf of defendant-appellant showing the date of knowledge to be 09.09.2011 when he went to Tehsil intending to obtain extract of khatauni. As per case of the defendant-appellant, he had taken a back while saw the name of plaintiff-respondent in khatauni pertains to the land in question, thereafter, he has engaged a counsel and got the record inspected on 09.09.2011. In this backdrop of the facts, defendant-appellant came with the case that his application for restoration is well within time from the date of knowledge. Therefore, under Article 123 of the Limitation Act, his application may be treated to be filed within prescribed period of limitation. In rejecting the restoration application, learned trial court has made much emphasis on the report dated 22.07.2008 submitted by court Amin (Paper No.14-C), which evince that Sobha Jain wife of Rakesh Jain (defendant) was interacted with the Court Amin and stated that Rakesh Jain is not presently available and went outside. She has been made acquainted with the notice of the court and pendency of the case, however, she refused to receive the notice which compelled the Process Server (Court Amin) to affix the notice along with the other documents at the front of the house and obtained signature of the two witnesses at the reverse side of the notices. Perusal of notice (Paper No.15-C), available on record, reveals that the Process Server has simply made following endorsement : "Patni Dwara Inkar - Chaspa". Below the aforesaid endorsement there is a signature of two witnesses namely one Chaman Lal son of Bhola Ram Saini and Wasim Ahmad son of Mohd. Anis. It would also be pertinent to mention that Mr. Wasim Ahmad and Chaman Lal have filed their personal affidavits (Paper No.64-C and Paper No.65-C respectively), reiterating similar facts that on the date of visit of the court Amin i.e. 22.07.2008, Rakesh Kumar Jain was not available at the residence and his wife, who had refused to receive summons had stated that there is no possibility of returning Rakesh Kumar Jain till evening. Learned trial court, relying upon the statement of witnesses of summon,

has treated the knowledge of defendant-appellant sufficient with respect to the pendency of the suit. Learned trial court has further observed that affixing notice on the front of the house is sufficient compliance of Order 5 Rule 17 C.P.C.

7. In my considered opinion, however, learned trial court has misread and misinterpreted the affidavits filed by witnesses in the light of observation made by Court Amin at the reverse side of the summon and provisions relating to the service of notice as enunciated under Order 5 and Rules thereunder. Learned trial court has utterly failed to point out contradiction between the endorsement made by the Court Amin and the affidavits filed by witnesses of summon. As per endorsement and the report submitted by Court Amin, wife of defendant has refused to accept notice, however, no detail has been averred by the Court Amin that wife has stated that no possibility returning of the defendant till evening. However, witnesses on the summon have emphasized the fact in their affidavits that the wife has stated that there is no possibility of returning Rakesh Jain till evening. In my opinion, statement of witnesses are not reliable in the light of the endorsement and the report made by Court Amin wherein there is no whisper that defendant will not be available till evening.

8. Apart from that, mere formality of obtaining the signature of witnesses and affixing notice on the outer door or some other conspicuous part of the house in which defendant ordinarily resides are not sufficient to complete the valid formality of service of notice. Legislation is never intended to avoid or bypass the personal service upon the defendant. Order 5 Rule 12 denotes that endeavour should be made to serve the defendant personally, unless he has an agent empowered to accept service. In furtherance thereto, Order 5 Rule 15 C.P.C. denotes that, where neither the defendant is available nor his authorized agent to be served, in that condition notice has been directed to be served upon any adult member of the family, whether male or female, who is residing with defendant. In

continuation of the procedure for service of notice, Rule 17 of Order 5 enunciates that in the eventuality, where none of three persons are available to receive notice viz. defendant or his authorized agent or his adult family member, duty has been casted upon the Process Server to affix the summons on the outer door of the house or some other conspicuous part of the house in which defendant ordinarily resides or carries on business or personally work for gain, and, thereafter, Process Server shall return the original copy of the notice to the court from which it was issued. In the given circumstances of the present matter, Rule 15 and Rule 17 of Order 5 are relevant. Under Rule 15 service of notice could be effectuated on any adult member of the family whether male or female, who is residing with defendant, under the following conditions:

(i) There is no likelihood of his being found at the residence within a reasonable time;

(ii) and he has no agent empowered to accept the service of summon on his behalf.

9. In the eventuality of refusal made by adult family member of the defendant to accept notice as enunciated under Rule 15, there is a provision affixation notice on the conspicuous part of the house etc. under Rule 17 in following conditions:

(i) where defendant or his agent or such other person (family member) refuses to sign the acknowledgement, as required under Rule 16, or

(ii) where serving officer, after using all due and reasonable diligence, cannot find the defendant.

As per Rule 17, under the following condition, defendant shall be treated as “not found” i.e.

(i) who is absent from his residence at the time when service is sought to be effected on him at his residence and

(ii) there is no likelihood of his being found at the residence within reasonable time.

Considering the conditions as enunciated under Rule 15 and 17 of Order 5, the relevant ingredients to treat the defendant absent for the purposes of effective service, is that "there is no likelihood of his being found at the residence within reasonable time". Rule 17, one step ahead, entrust duty upon the Process Server that "to use all due and reasonable diligence" intending to find out the defendant.

10. In the instant matter, I did not find any endeavour made by the Court Amin (Process Server) to discharge his duty properly as entrusted upon him under Rule 12, 15 and 17 of Order 5. A simple statement of wife of defendant-appellant on the first date of visit of the Process Server, wherein wife has refused to accept the notice and shown unavailability of her husband (defendant), has been treated to be sufficient by learned trial court for the purpose of effective service of notice upon the defendant. No discussion has been made by learned trial court as to what "due and reasonable diligence" has been exercised/performed by the Process Server (Court Amin) before affixing the notice on the conspicuous place of the house. It is also not made clear by the Process Server and the learned trial court that under what circumstances they came to conclusion that there is no likelihood of defendant being found at the residence within a reasonable time. There is nothing on the record to demonstrate that the Court Amin has made any endeavour (apart from the first visit) with “due and reasonable diligence” to find out the defendant-appellant. I did not find any justifiable ground to make out a case that defendant-appellant was not likely to be presented or found at his residence within reasonable time.

11. The Hon'ble High Court of Madras has expounded in the case of ***Abdul Salam Rowther vs. State Bank of India decided on 19.03.1993, (MANU/TN/0487/1993)***, that before treating the service of notice,

effective compliance of provisions as enunciated under Order 5 has to be followed properly. For ready reference paragraph nos.7 & 8 of the aforesaid judgement is quoted hereinbelow:

> "7. In Mrs. Emkamma Bai v. Ravikumar (1992) 1 L. W. 54, the duty of the process server under Order 5, Rule 15, C.P.C. has been stated by Srinivasan, J in this manner. Under Order 5, Rule 15, C.P.C., it is an essential precondition that the process-server should ascertain whether there was likelihood of the defendants 3 and 4 being found in the residence within a reasonable time. If the defendants 3 and 4 could be found at their residence within a reasonable time, then the process-server should wait or go to the residence of the defendants once again on another day and try to serve on them at their residence personally. In case where the defendants may not be found at their residence within a reasonable time, the process-server could serve the summons on any adult member of the family, whether male or female, residing with such defendant. As the process-server has not ascertained such fact in the present case and has not made any reference in the affidavit to the factum of his ascertaining as to whether there is any likelihood of the defendants being available for service at their residence within a reasonable time, the service of summons on a person, who has described himself as the 4th defendant's brother and 3rd defendant's son is not a valid service. It cannot be countenanced in law as service within the meaning of Order 5, Rule 15, C.P.C. In Kuttiappa v. Rangasami MANU/TN/0456/1992: (1992) 2 MLJ 362, also Srinivasan, J. has reiterated the procedure to be followed as under.
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> > *Under Order 5, Rule 15, C.P.C., if the defendant is absent from his residence at the time when the service of summons is sought to be effected on him, the process server must be satisfied, (i) that there is likelihood of the defendant being found at the residence within a reasonable time, and (ii) he had no agent empowered to accept the service of summons on his behalf and in that event, service may be made on any adult member of the family, whether male or female, who is residing with him. Order 5, Rule 17 is to the effect that when the defendant or his agent refuses to sign the acknowledgment or where the serving officer, after using all due and reasonable diligence cannot find the defendant who is absent from his residence and there is no likelihood of his being found at the residence within a reasonable time and if there is no agent or other person to receive the summons, the Serving Officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides and shall then return the original to the court with report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so and, the name and address of the person by whom the house was identified and in whose presence the copy was affixed.*
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> 8. It does not appear from the records in this case that any endeavour has been made to follow the procedure prescribed in Order 5, C.P.C. in the service of summons as already referred to. Rule 12 of Order 5 requires that whereever it is practicable, service shall be made on the defendant in person, unless he has an

> agent empowered to accept service in which case service on such agent shall be sufficient. Under Order 9, Rule 6 C.P.C., where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then,
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> (a) if it is proved that the summons was duly served, the Court may make an order that the suit be heard ex pane.
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> In this case, there is no record to indicate that the Court was satisfied that there was due service of summons."

12. It is also apposite to mention that while proceeding with the matter ex-parte against the defendant-appellant, vide order dated 11.12.2018, learned trial court has simply shown the absence of the defendant and ordered to be proceeded ex-parte. However, no specific finding has been returned with respect to the effective service of notice upon the defendant as required under Order 9 Rule 6 (a) C.P.C.

13. It is pertinent to be noted as well that to prove the effective service of notice upon defendant under Order 5 Rule 17, Process Server/ Court Amin has to verify the return of summon by filing his personal affidavit as enunciated under Order 5 Rule 19 C.P.C. Return of summon in case not verified by the affidavit of Serving Officer, court shall examine him on oath, however, in case, it has been verified, court may examine him and may make such further enquiry in the matter as it think fit. After such examination, court shall either declare that summon has been duly served or pass an order for such service as it thinks fit. In the matter in hand learned trial court, while passing the order impugned has not complied with the provisions as enunciated under Order 5 Rule 19 C.P.C.

14. Therefore, in this conspectus as above, I am of the view that the learned trial court has failed to consider the relevant provisions for the effective service of notice upon defendant-appellant as enunciated under Order 5 Rule 12, 15, 17 and 19 C.P.C.. Thus, service of notice upon the defendant no.2 cannot be treated to be sufficient for the purposes of deciding the suit ex-parte or for the purposes deciding the delay in filing the restoration application against the ex-parte decree.

15. None filing of separate formal application under Section 5 of the Limitation Act, for the condonation of delay in filing the restoration application against the ex-parte judgement and decree dated 13.11.2009 has also been taken as a vidal ground by learned trial court while dismissed the restoration application on the ground of latches. In this respect, learned counsel for the plaintiff-respondent has cited the case of ***Sneh Gupta (supra)*** and contended that formal application under Section 5 of Limitation Act is necessary. However, learned counsel for the appellant has submitted that separate formal application for the condonation of delay under Section 5 of Limitation Act is not required, in case sufficient ground is made out to prove bona-fide conduct of the defendant. He has place reliance on the judgement of ***Sesh Nath Singh (supra)***. Perusal of restoration application dated 12.09.2011 reveals that in the prayer clause of the application, defendant-appellant has sought relief for the condonation of delay as well with an averment that in case his application is found beyond prescribed period of limitation, he may be accorded benefit under Section 5 of the Limitation Act. On the premise of prayer made by the defendant-appellant in the restoration application, this fact is quite distinguishable from the facts of case ***Sneh Gupta (supra)*** relied upon by learned counsel for the plaintiff-respondent. There is no such observation made by the Hon'ble Supreme Court in the aforesaid cited case, that even after relief sought for the condonation of delay, same cannot be entertained for want of proper application under Order 5 of the Limitation Act. Even otherwise, case of ***Sesh Nath Singh (supra)*** is subsequent to the case of ***Sneh Gupta (supra)***. As per established law, in the matters, if two irreconcilable decision of the Hon'ble Supreme Court delivered by Bench of equal strength, the latter decision of the Hon'ble Supreme Court will prevail. Thus, in the subsequent judgment of ***Sesh Nath Singh (supra),*** the Hon'ble Supreme Court has expounded that even in absence of the formal application delay can be condoned, if there are sufficient material on record disclosing sufficient cause for the delay. In

the matter in hand cause shown by the defendant-appellant for delay in filing the restoration application is quite sufficient and convincing. Therefore, in the light of the prayer made by defendant-appellant for granting benefit under Order 5 of the Limitation Act, defendant-appellant cannot be forced to file separate formal application for the condonation of delay under Section 5 of the Limitation Act. As such, in the light of the facts as discussed above, case of the defendant-appellant is liable to be treated within prescribed period of limitation from the date of knowledge i.e. 09.09.2011, under the provisions of law as enunciated under Article 123 of the Limitation Act.

16. So far as the compliance of Rule 89 of General Rule Civil is concerned, as submitted by learned counsel for the appellant, I am of the view that in light of the fact wherein case was already ordered to be proceeded ex-parte by order dated 11.12.2008, subsequent transfer order dated 28.01.2009 has not got much relevance for the purposes of issuance of fresh notices to the parties under Rule 89 of General Rule Civil.

17. Even otherwise, in the matter of delay court should conscious and make endeavour to do complete justice to both the parties appearing before him. It is settled law that all Courts of law are established for furtherance of interest of substantial justice and not to obstruct the same on technicalities. ***Reference-- Jai Jai Ram Manohar Lal Vs. National Building Material Supply; AIR 1969 SC 1267***, wherein it has been held that the substantial justice and technicalities, if pitted against each other, the cause of substantial justice should not be defeated on technicalities. No procedure in a Court of law should be allowed to defeat the cause of substantial justice on some technicalities. ***Reference - Ghanshyam Dass & Ors. Vs. Dominion of India & Ors., AIR (1984) 3 SCC 46***.

18. Apart from that in recent judgment of ***Bhivchandra Shankar More vs. Balu Gangaram More & Ors (decided by Hon'ble Supreme Court on 07.05.2019), reported in 2019(6) SCC 387***, it is expounded that in

condoning the delay "sufficient cause" should be given liberal construction so as to advance substantial justice. The relevant paragraph nos. 15 and 16 of the aforesaid judgment are being quoted herein below:-

> *"15. It is a fairly well settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bonafide could be imputable to the appellant. After referring to various judgments, in B. Madhuri, this Court held as under:-*
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> *"16. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay."*

19. Observing that the rules of limitation are not meant to destroy the rights of the parties, in ***N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123***, this Court held as under:-

> *"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts.*
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> *So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time." As pointed out earlier, an appeal under Section 96 CPC is a statutory right. Generally, delays in preferring appeals are required to be condoned, in the interest of justice, where there is no gross negligence or deliberate inaction or lack of bonafide is imputable to the party seeking condonation of delay."*

20. In this conspectus as discussed above, I am of the considered view that learned trial court has illegally denied to extend the benefit under Section 5 of the Limitation Act and rejected the restoration application. Defendant-appellant has been deprived of from an adequate opportunity

of hearing in original suit which has been decided ex-parte, resulted into depriving the defendant from his property which was subject matter of the sale deed dated 02.02.1994. There is no proper application of judicial mind while rejecting the restoration application filed on behalf of defendant-appellant. Delay in filing the restoration application is liable to be condoned and the restoration application is liable to be allowed as well. Order under challenge is illegal, unwarranted under the law and infirm which is liable to be quashed.

21. Resultantly, instant First Appeal From Order is allowed and the judgement and order dated 10.12.2021 passed by learned trial court dismissing the restoration application moved on behalf of the defendant-appellant under Order 9 Rule 13 C.P.C. is hereby quashed and said restoration application is allowed. Consequently, ex-parte judgement and decree dated 13.11.2009 passed by learned District Judge, Court No.5, Muzaffar Nagar in Original Suit No.648 of of 2008 (Julfkar Ali vs. Rakesh Kumar Jain) is quashed as well and Original Suit No.648 of 2008 is restored to its original number. Parties are relegated to the trial court. Suit shall be decided afresh in accordance with law after giving opportunity of hearing to the parties concerned.

22. Before parting the matter, counsel for the parties have prayed for issuing a direction to the court below for expeditious disposal of the suit. Having considered the peculiar facts and circumstances of the present case, wherein suit was decreed ex-parte on 13.11.2009 resulted into the cancellation of the registered sale deed dated 02.02.1994, it would be befitting to issue a direction for expeditious disposal of the suit. As such, this Court trust and believe that learned trial court shall make all endeavour to decide the suit within 12 months from the date of appearance of the parties along with the certified copy of this order.

23. Both the parties are hereby directed to appear before the trial court concerned and move an appropriate application, along with the certified

copy of order of the date, on or before 22.01.2024. Defendant-appellant is hereby directed to submit his written statement along with relevant documents relied upon by him on or before the next date fixed by this Court i.e. 22.01.2024, so that, unnecessary time may not be wasted in filing the written statement and trial could be expedited within a stipulated period as directed above.

Order Date :- 22.12.2023

Jitendra