



2026:DHC:7818



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

% *Judgment Reserved on: 21.08.2026*  
*Judgment Delivered on: 15.09.2026*

# **CNR No. DLHC010377662025**

+ **RFA 545/2025**

**SURESH KUMAR (SINCE DECEASED) THR LR DEVRAAJ S  
VASHISHT** .....Appellant

versus

**SK JOSHI** .....Respondent

**Advocates who appeared in this case**

For the Appellant : Mr. Harsh Vardhan Sharma,  
Advocate.

For the Respondent : Ms. Aditi Pancharia and Mr. Arvind  
Rathaur, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE TEJAS KARIA**

**ORDER**

**TEJAS KARIA, J**

**CM APPL. 30979/2026**

1. The present Application has been preferred by the Appellant under Section 151 of the Code of Civil Procedure, 1908 (“CPC”), seeking modification of the order dated 11.06.2025 (“Order”) passed in the present



Appeal. The Appellant seeks reduction of the amount of deposit as directed *vide* the Order towards the damages/mesne profits calculated at ₹1,000/- per day from 01.01.2019 to 11.06.2025, together with interest at 6% per annum, and a sum of ₹92,000/- towards arrears of rent, also with interest at 6% per annum (“**Deposit Condition**”) within four weeks from the date of the Order for grant of interim protection till the next date of hearing in the Appeal.

### **FACTUAL BACKGROUND**

2. The Respondent instituted Civil Suit No. 187/2019 titled ‘*Shri S.K. Joshi v. Shri Suresh Kumar*’ (“**Suit**”) before learned Additional District Judge-2 (North West), Rohini Courts, Delhi (“**Trial Court**”), seeking possession of the property bearing No. 146, First Floor, Pocket-14, Sector-24, Rohini Residential Scheme, Rohini, Delhi-110085 (“**Suit Property**”) along with arrears of rent and damages or mesne profits against one Shri Suresh Kumar (“**Defendant**”) being a tenant in the Suit Property under agreements dated 03.12.2013, 01.09.2015 and 10.08.2016 on account of default in payment of rent since April 2018 by the Defendant.
3. As the Defendant did not enter appearance in the Suit, learned Trial Court proceeded *ex parte* against the Defendant on 16.08.2022 and *vide* judgment and decree dated 21.02.2023 (“**Impugned Judgment**”), decreed the Suit in favour of the Respondent.
4. Pursuant to the Impugned Judgment, the Respondent instituted an execution petition bearing No. 143/2023 (“**Execution Petition**”) in July 2023, wherein warrants of attachment were issued against the Defendant on 31.05.2024.



5. The Defendant passed away on 28.09.2023 and, thereafter, on 07.04.2025, the Appellant, being the legal representative of the Defendant, filed an application under Order IX Rule 13 of the CPC before learned Trial Court for setting aside the Impugned Judgment. Learned Trial Court, *vide* order dated 22.05.2025, dismissed the said application, observing that the Defendant was aware of the pendency of the Suit during his lifetime and had deliberately avoided service of summons through his son.

6. Subsequently, the Appellant preferred the present Appeal challenging the Impugned Judgment, wherein this Court *vide* the Order granted interim protection with respect to the possession of the Suit Property till the next date of hearing subject to the Deposit Condition.

7. This Court *vide* order dated 28.03.2026 passed in this Appeal observed that the Deposit Condition had not been complied with by the Appellant and granted liberty to the Respondent to have the Execution Petition revived.

8. The Appellant, thereafter, preferred CM APPL. 31749/2026 under Section 151 of the CPC seeking recall of the order dated 28.03.2026. This Court dismissed CM APPL. 31749/2026 *vide* order dated 12.05.2026, observing that the Deposit Condition had not been complied with and, therefore, there was no reason to clarify or modify the order dated 28.03.2026 and while recording that the Appellant had moved the present Application at that stage, granted liberty to the Appellant to pursue the present Application in accordance with law.



### **SUBMISSIONS ON BEHALF OF THE APPELLANT**

9. Learned Counsel appearing on behalf of the Appellant made the following submissions:

- 9.1. The Defendant was never duly served with the summons in the Suit and was unaware of its pendency. The Respondent has failed to place any material on record evidencing personal service upon the Defendant in accordance with the CPC, nor any acknowledgment bearing the Defendant's signature. The Respondent has, therefore, failed to establish valid service.
- 9.2. The Defendant had never authorised any person named Arjun to receive summons on his behalf. The Respondent neither established Arjun's identity nor produced any material demonstrating that he was duly authorised by the Defendant to accept service. Mere allegations of refusal, or reliance on the process server's report, cannot constitute valid service unless the mandatory requirements of law are duly satisfied.
- 9.3. The Appeal raises substantial and arguable questions, particularly concerning the non-service of summons, which goes to the root of the Impugned Judgment. The correctness of the findings on service recorded by learned Trial Court in its order dated 22.05.2025 forms part of the controversy in the Appeal and cannot be regarded as conclusive for the purposes of the present Application.



- 9.4. The Appellant is facing financial hardship, and the Deposit Condition imposes a substantial and onerous financial burden upon him. Accordingly, the Appellant's non-compliance with the Deposit Condition was neither deliberate nor intentional.
- 9.5. The Respondent had already received ₹45,15,000/- from the Defendant towards the sale consideration for the Suit Property and its Ground Floor. Notwithstanding receipt of the said amount, the Respondent neither executed the sale deed in favour of the Defendant nor refunded the amount and continued to retain the entire sale consideration. Having retained the said amount while failing to execute the sale deed, the Respondent cannot seek to defeat the Appeal by insisting upon compliance with the onerous Deposit Condition.
- 9.6. The order dated 28.03.2026, whereby liberty was granted to revive the Execution Petition, was passed on account of non-compliance with the Deposit Condition and cannot be construed as a final adjudication upon the legality of that condition. Further, the dismissal of CM APPL. 31749/2026, which sought recall of the order dated 28.03.2026, does not bar the maintainability of the present Application, as the latter raises distinct and independent grounds for modification of the Deposit Condition.
- 9.7. The inherent powers of this Court are intended to secure the ends of justice and prevent abuse of its process. Where the facts and circumstances so warrant, this Court is empowered to modify its



procedural directions to ensure that the cause of justice is not defeated. The Appellant remains in possession of the Suit Property, and revival of the Execution Petition would occasion irreparable loss and injury incapable of adequate monetary compensation.

- 9.8. Unless the Deposit Condition is suitably modified, the Appeal would be rendered illusory, and the Appellant would suffer grave and irreparable prejudice without an adjudication on the merits.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

10. Learned Counsel appearing on behalf of the Respondent made the following submissions:

- 10.1. The Defendant was merely a tenant in respect of the Suit Property, and his tenancy stood terminated with effect from 31.12.2018 on account of non-payment of rent since April 2018. Notwithstanding the termination of the tenancy, the Defendant continued to occupy the Suit Property, thereby compelling the Respondent to institute the Suit.
- 10.2. The Defendant never paid any amount to the Respondent towards the purchase of the Suit Property. The Appellant has placed no receipt, RTGS or NEFT particulars, or any other proof of payment on record to substantiate the alleged payment of ₹45,15,000/-. The Appellant has also failed to produce any material demonstrating that the Defendant took steps to secure execution of the sale deed or instituted proceedings for specific performance or recovery of



the alleged amount. The two *bayana* receipts dated 12.04.2018 filed by the Appellant (“**Receipts**”) are forged and fabricated. In any event, the Receipts stipulate 24.07.2018 as the final date for registration of the documents; accordingly, any claim founded thereon, raised after approximately seven years, is barred by limitation.

- 10.3. Service of summons in the Suit was first attempted upon the Defendant on 12.06.2019, when one Arjun, stated to be his son, refused to accept service. Summons were reissued on 08.11.2021 and were again refused. Thereafter, following repeated attempts to effect service upon the Defendant, the process server affixed the summons to the door of the Suit Property. Learned Trial Court, by its order dated 22.05.2025 dismissing the Appellant’s application under Order IX Rule 13 of the CPC for setting aside the Impugned Judgment, duly recorded that service of summons upon the Defendant was valid and lawful.
- 10.4. The interim protection granted *vide* the Order was expressly subject to compliance with the Deposit Condition. The Appellant elected not to comply with the Deposit Condition. Consequently, by order dated 28.03.2026, this Court granted liberty to the Respondent to seek revival of the Execution Petition, thereby effectively vacating the interim protection granted under the Order.



- 10.5. The application seeking recall of the order dated 28.03.2026 has already been dismissed by this Court *vide* order dated 12.05.2026. The Appellant is resorting to forum-shopping tactics solely to continue occupying the Suit Property unlawfully and without authority.
- 10.6. The Appellant has failed to establish any ground warranting modification of the Deposit Condition. The present Application was filed only after the other remedies pursued by the Appellant to obstruct execution of the Impugned Judgment had failed. Notwithstanding the Impugned Judgment, the Appellant's continued non-compliance with the Deposit Condition for more than one year, and the dismissal of the application under Order IX Rule 13 of the CPC, the Appellant remains in exclusive possession of the Suit Property, to the exclusion of the 80-year-old Respondent, despite having no right, title, or interest therein.
- 10.7. Accordingly, the present Application merits dismissal as being devoid of merit.

### **ANALYSIS AND CONCLUSION**

11. Heard learned Counsel for the Parties and perused the material placed on record.
12. *Vide* the Order, while issuing notice in the Appeal, interim protection was granted to the Appellant, subject to compliance with the Deposit Condition. Upon finding that the Appeal warranted consideration on merits, this Court directed that the Appellant's possession of the Suit Property be



protected until the next date of hearing. Such interim protection was expressly conditional upon the Appellant depositing the arrears of rent and damages or mesne profits before learned Trial Court within a period of four weeks. The relevant portion of the Order is reproduced below:

*“14. Hence, the present Appeal requires consideration on merits and till the next date of hearing, the status quo regarding the possession of the Property by the Appellant shall be maintained on condition that the Appellant shall deposit the Damages/Mesne Profits at ₹1,000/- per day from 01.01.2019 till date of this order with interest at 6% per annum along with ₹92,000/- towards arrears of rent with interest at 6% per annum before the learned Trial Court within a period of 4 (four) weeks from the date of this order. It is ordered accordingly.”*

13. It is undisputed that the Appellant has not deposited any amount before learned Trial Court in compliance with the Order. The four-week period prescribed therein for compliance with the Deposit Condition expired on 09.07.2025. Even thereafter, the Appellant failed to comply with the Deposit Condition and continued to remain in the possession of the Suit Property without making any payment in violation of the Deposit Condition in the Order.

14. The period prescribed for compliance with the Deposit Condition expired without the Appellant seeking any extension of time, and the Appellant has not challenged the Order at any stage.

15. The present Application has been filed on 28.04.2026, nearly ten months after expiry of the stipulated period of four weeks for compliance with the Deposit Condition and only after the Roster Bench *vide* order dated 28.03.2026, recorded the Appellant's non-compliance with the Deposit Condition and granted liberty to the Respondent to seek revival of the



Execution Petition. The Appellant has furnished no explanation for the delay in filing the present Application seeking modification of the Deposit Condition. The present Application is, therefore, an afterthought.

16. The interim protection granted *vide* the Order was expressly conditional upon due compliance with the Deposit Condition within the period prescribed therein. The Appellant neither fulfilled the Deposit Condition within the stipulated period nor obtained any extension of time or modification of the said condition from this Court. Consequently, the interim protection ceased to subsist, and the Appellant could not continue to claim the benefit of such protection while remaining in breach of the Deposit Condition.

17. The belated prayer for modification of the Deposit Condition cannot be entertained based on the Appellant's pleas concerning the alleged non-service of summons in the Suit or the alleged payment of ₹45,15,000/- to the Respondent towards the sale consideration for the Suit Property. Both submissions raise issues on the merits of the Appeal and require adjudication upon consideration of the pleadings, evidence, and material placed on record.

18. Accordingly, in the facts and circumstances of the present case, the aforesaid submissions do not constitute a valid or sufficient basis for modification of the Deposit Condition.

19. The Appellant's submission that the Deposit Condition is onerous and that he is facing financial hardship is equally untenable. The Appellant has not disputed that the Defendant was a tenant in the Suit Property and had defaulted in payment of rent since April 2018. The Appellant cannot be permitted to continue enjoying possession of the Suit Property without



making any payment whatsoever. Having availed himself of the interim protection granted *vide* the Order and retained possession of the Suit Property without complying with the Deposit Condition, the Appellant cannot now seek to avoid the corresponding obligation. If the Deposit Condition was indeed onerous, the Appellant would have sought its modification within the period prescribed for compliance or, at the very least, within a reasonable period thereafter. Instead, the Appellant continued to avail himself of the interim protection without fulfilling the condition upon which it was granted and sought modification only after the order dated 28.03.2026 granted liberty to the Respondent to revive Execution Petition. Such conduct does not lend credence to the *bona fides* of the plea that the Deposit Condition is onerous.

20. In these circumstances, the Appellant has failed to establish any ground warranting modification of the Deposit Condition. The Respondent holds the Impugned Judgment for possession of the Suit Property, whereas the Appellant continues to retain possession thereof without having complied with the Deposit Condition. The balance of equities, therefore, does not lie in favour of the Appellant.

21. In view of the foregoing discussion, no ground has been made out for modification of the Deposit Condition imposed *vide* the Order to reduce the amount. It is further clarified that, upon the Appellant's failure to fulfil the Deposit Condition, the interim protection granted *vide* the Order has ceased to operate. Consequently, there is no legal impediment to the Respondent proceeding with the Execution Petition and seeking eviction of the Appellant from the Suit Property forthwith, in accordance with law.



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22. Accordingly, the present Application is dismissed. There shall be no order as to costs.

**TEJAS KARIA, J**

**SEPTEMBER 15, 2026**

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