

HIGH COURT OF DELHI AT NEW DELHI

No. 820 - 832/Rules/DHC/2025

Dated : 08/10/2025

From

The Registrar General
High Court of Delhi
New Delhi



To

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts, Delhi.
2. The Principal District & Sessions Judge, North-West District, Rohini Courts, Delhi.
3. The Principal District & Sessions Judge, South District, Saket Courts, New Delhi.
4. The Principal District & Sessions Judge, South-West District, Dwarka Courts, New Delhi.
5. The Principal District & Sessions Judge, North District, Rohini Courts, Delhi.
6. The Principal District & Sessions Judge, South-East District, Saket Courts, New Delhi.
7. The Principal District & Sessions Judge, East District, Karkardooma Courts, Delhi.
8. The Principal District & Sessions Judge, New Delhi District, Patiala House Courts, New Delhi.
9. The Principal District & Sessions Judge, Shahdara District, Karkardooma Courts, Delhi.
10. The Principal District & Sessions Judge, North-East District, Karkardooma Courts, Delhi.
11. The Principal District & Sessions Judge, West District, Tis Hazari Courts, Delhi.
12. The Principal District & Sessions Judge-cum-Special Judge, CBI (PC Act), Rouse Avenue District Court Complex, New Delhi.
13. The Principal Judge (HQ), Family Courts, Dwarka Courts Complex, Dwarka, New Delhi.

Sub: Implementation of Rules 5 and 6 of Part J of Chapter 1 of Volume I of Delhi High Court Rules & Orders and judgment dated 21.11.2023 passed by Hon'ble Delhi High Court in CrI.M.C. 527/2023 titled "Fahim vs. State"

Sir,

I am directed to forward herewith copy of Rules 5 and 6 of Part J of Chapter 1 of Volume I of Delhi High Court Rules & Orders and judgment dated 21.11.2023 passed by Hon'ble Delhi High Court in CrI.M.C. 527/2023 titled "Fahim vs. State" (copy enclosed) with a request to circulate the same to all the judicial officers of your District so that cases are not dismissed in default nor ex-parte orders are passed hastily and coercive steps in criminal cases are taken only as per directions passed in the aforesaid judgment.

Encl.: As above

Yours faithfully,
(Signature)
08-10-25
(Syed Zishan Ali Warsi)
Joint Registrar (Judicial)(Rules)
For Registrar General

OIC Genl. Br.
for circulation / *(Signature)*
(Signature)

Pr. D & ST / HQ

recorded separately by the reader at one place in chronological order and kept at the beginning of the English record of evidence.

PART J

DISMISSALS IN DEFAULT AND EX PARTE PROCEEDINGS

1. General—Order IX of the Code deals with the appearance of parties and the consequences of non-appearance on the first hearing. Order XVII, Rule 2, lays down that the non-appearance of a party on an adjourned hearing may lead to similar consequences.

2. Default by parties—Order IX, Rule 3, provides that when neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

3. Default by defendants—(a) Order IX, Rule 5, provides that, if on the day fixed in summons for the defendant to appear, and answer, the plaintiff appears and the defendant does not appear, and it is proved that the summons was duly served in sufficient time to enable the defendant to appear and, answer on the day named in the summons, the Court may proceed to try the case *ex parte*. Even in such cases, however, the plaintiff must prove this case to the satisfaction of the Court, before he can obtain a decree. The defendant, it will be observed, may apply under Order IX, Rule 13, for an order to set aside the *ex parte* judgment at any period between the date of the judgment and the thirtieth day from the date of the decree or where the summons was not duly served, from the date on which he has knowledge of the decree (See Article 123, Schedule 1, of the Indian Limitation Act). The provisions of Section 5 of the Indian Limitation Act, 1963, have recently been made applicable to all applications for the setting aside of *ex parte* decrees and for restoration of suits under Order 9, Rules 4 and 9. These applications may, therefore, be admitted even after the period of thirty days if the applicant satisfies the Court that he had sufficient cause for not making the application within such period. If he satisfies the Court that the summons was not "duly served", or that he was prevented by sufficient "cause" from appearing when the suit was called for hearing, the Court should set aside the order on such terms as to costs or otherwise as it may deem fit.

(b) Attention is drawn to Order IX, Rule 7, which lays down the procedure for setting aside *ex parte* proceeding when the hearing of the suit has been adjourned *ex parte* but no *ex parte* decree has been passed.

4. Default by plaintiff—Order IX, Rule 8, lays down that if the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order dismissing the suit, unless the claim is admitted wholly or in part, in which case the claim shall be decreed only to the extent to which it is admitted.

5. Hasty dismissal not advisable—The above rules must be worked

in a reasonable manner, otherwise they will result in a number of applications for setting aside orders passed in the absence of one or both parties. It is possible that a party may have temporarily gone away to call his counsel or to refresh himself and a person cannot be expected to be in constant attendance throughout the day. The Court should to avoid hardship, lay aside the case where any party does not appear when the case is called. The case may be called again, later in the day after the other work has been finished or when both the parties turn up and the Court can conveniently take up the case that had been laid down. If these rules are worked in a reasonable manner applications for restoration of suits or setting aside of *ex parte* orders would be reduced in number. Such applications generally lead to delay in the disposal of cases and waste a good deal of the time of the Courts and the litigants.

COMMENTS

Rule 5 of High Court Rules and Orders requires that in case the Pleader of a litigant is not available and is sent for, the Court should not straightway proceed to dismiss the suit for default but should call the case again in the later part of the day. That has not been done in the present case. The fact that the application for restoration on ground of counsel being busy in another court and party having gone to call him at time of dismissal, is filed on the same day within half an hour after dismissal would show that the party is not guilty of contumacious negligence or wilful default. Suit restored. *The Lakshmi Commercial Bank v. Hans Raj Sayal*, AIR 1981 (P&H) 228.

6. Hasty dismissal not advisable—The tendency to dismiss cases in default or to pass *ex parte* orders in a hasty manner in order to show an increased outturn is to be strongly depreciated and is not to be resorted to in any case. The Presiding Officers should note down the time in their own hand when a case is dismissed in default or an order to proceed *ex parte* is passed.

COMMENTS

A case should not be dismissed earlier in the day for default of appearance. *Kamlawati v. Shambhu Nath & Sons*, 1976 Raj. L.R. (N) 96.

7. Order of "Dakhil Daftar" is irregular—There is a tendency for Presiding Officers of Civil Courts to pass orders that cases should be "dakhil daftar". This practice is incorrect. A Presiding Officer should invariably make it clear what the precise nature of the order is, i.e., whether the case is postponed or dismissed and the rule, if any, under which the order is passed should also be mentioned.

8. Registration of suits—When a plaint is presented a suit is thereby instituted under Order IV, Rule 1, of the Code and the suit must forthwith be entered in the Register of Civil Suits (Civil Register No. 1) in accordance with Order IV, Rule 2.

9. Procedure when plaintiff is not present on the preliminary date—It is customary, when a plaint is presented, to fix a short preliminary date in order to permit the examination of the plaint. On this preliminary date



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 21st November, 2023+ CRL.M.C. 527/2023

FAHIM

..... Petitioner

Through: Mr.Aditya Aggarwal, Mr.Naveen
Panwar and Mr.Jayseeka Virdi,
Advocates.

versus

STATE

..... Respondent

Through: Mr.Shoaib Haider, APP for State with
SI Rahul, PS. Seelampur.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENTAMIT BANSAL. J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure 1973 (CrPC), seeking setting-aside of the order dated 3rd January, 2023, whereby the learned ASJ was pleased to issue Non-Bailable Warrants (NBWs) for the production of the petitioner and the order dated 17th January, 2023, whereby the learned ASJ rejected the application of the petitioner for cancellation of the NBWs and thereby remanded him to judicial custody.

2. *Vide* the order dated 25th January, 2023, passed by the predecessor Bench, the petitioner was ordered to be released from judicial custody. The petitioner had already been granted bail by this Court *vide* order dated 14th

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September 2020 passed in BAIL APPLN. 2261/2020.

3. I have heard counsels for the parties and perused the material on record.

4. Rule 3, Part C (i), Volume III, Chapter 1 of the Delhi High Court Rules states that issuance of warrants interferes with the personal liberty of a person and the Magistrate should take care that no greater hardship than is necessary is caused to the person concerned.

5. A Co-ordinate Bench of this Court in *Afzal Ahmad v. State*, 2022 SCC OnLine Del 256, has observed that the Trial Court should not have issued NBWs against the petitioner on account of non-appearance of the petitioner in the early hours of the day.

6. Another Co-ordinate Bench of this Court in *Naresh Kumar v. State*, (2006) 131 DLT 678, held that the Trial Courts should not take an extreme step of issuing NBWs during the first call and in the pre-lunch hours of the day.

7. This Court is in full agreement with the aforesaid views taken by the Co-ordinate Benches. On a lot of occasions due to variety of reasons, including the traffic situation in the city, various parties are unable to reach the Court when the matter is called for the first time, but reach later.

8. It is to be noted that in the present case, the petitioner did appear before the Trial Court on 3rd January, 2023 when the matter was listed, however, the petitioner reached the Trial Court after the matter had already been called. As per the petitioner, he reached late due to heavy traffic because of a political rally. An application for cancellation of the NBWs was moved on behalf of the petitioner immediately on the same date. However,

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the said application was dismissed by the Trial Court *vide* order dated 17th January, 2023.

9. In my considered view, there was no justification for the Trial Court to issue an NBW on account of non-appearance of the petitioner on 3rd January, 2023 in the early hours of day. Further, keeping in mind that the application for cancellation of the NBW was filed on the same date along with an explanation for non-appearance, the same should have been considered immediately by the Trial Court. The reasons given by the Trial Court in the order dated 17th January, 2023 dismissing the application for cancellation of the NBW are wholly unsustainable. Accordingly, both the impugned orders dated 3rd January, 2023 and 17th January, 2023 are set aside.

10. The present case highlights a growing trend of the Trial Courts going against the judgments of this Court as well as the Rules established and dismissing genuine reasons of non-appearance of the parties and issuing warrants against them.

11. The legal position in issuance of warrants is abundantly clear, however, the same is not being followed by the Trial Courts, thus, there need to be certain guidelines put in place for securing appearance of parties before the Trial Courts in accordance with law.

12. In view of the above, for the guidance of the Trial Courts in similar cases, following directions are issued :-

- i. The Trial Courts should not issue NBWs against a person on first call in the pre-lunch hours of the Court, except when there are genuine apprehensions that the person would abscond if not taken into

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custody. Such coercive steps should be taken only post 12:30 PM.

- ii. In situations where warrants, either bailable or non-bailable, are issued and the person appears before the Court during the course of the Court hours, the Courts should assess if the reason of non-appearance of the person was reasonable and if warranted, costs may be imposed.
- iii. If the person is present through his authorized Advocate, warrants for appearance of the person should be issued only in exceptional circumstances, with reasons for the same being recorded in writing, especially where an application seeking exemption from personal appearance has been filed on behalf of the person.
- iv. If an application for cancellation of NBWs due to non-appearance of the parties is filed shortly after the issuance of NBWs, the Trial Court should expeditiously consider the said application.

13. A copy of this order be forwarded to all the Principal District and Sessions Judges in Delhi for circulation to all the Trial Courts trying criminal cases.

AMIT BANSAL, J

NOVEMBER 21, 2023

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