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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 226/2026, CM APPLs. 48237/2026, 48238/2026, 48239/2026,**
48240/2026

SUNDER LAL GUPTA

.....Appellant

Through: Ms. Mumtaz Ahmed, Mr. Satish
Sharma, Mr. Deepak Sharma,
Advocates

versus

FARID

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **28.07.2026**

CM APPL. 48237/2026 & CM APPL. 48238/2026 (exemptions)

1. Allowed, subject to all just exceptions.
2. The application is disposed of accordingly.

FAO 226/2026 & CM.APPL. 48239/2026(delay)

1. By way of the present application, the appellant seeks condonation of delay in filing the accompanying appeal. The appeal under Order XLIII Rule 1(d) read with Section 104 of the Code of Civil Procedure, 1908 (hereinafter, 'CPC') is directed against the order dated 25.10.2024 passed by the learned District Judge-03, South-West District, Dwarka Courts in Misc. DJ ADJ No.652/2023, whereby the appellant's application under Order IX Rule 13 read with Section 151 CPC seeking setting aside of the *ex parte* judgment and decree dated 13.09.2023 came to be dismissed.
2. Briefly, the respondent instituted a suit for recovery of Rs. 5,23,096/- against the appellant. Summons in the suit were admittedly served upon the



appellant on 07.10.2022. Pursuant thereto, learned counsel entered appearance on behalf of the appellant on 06.12.2022. Although the learned Trial Court granted further time on 14.03.2023 to file the written statement, the appellant failed to do so. Even thereafter, despite the matter being listed on subsequent dates, no written statement came to be filed.

3. Consequently, by order dated 13.09.2023, the learned Trial Court closed the appellant's right to file the written statement, struck off the defence and proceeded to decree the suit under Order VIII Rule 10 CPC.

4. Thereafter, the appellant preferred an application under Order IX Rule 13 read with Section 151 CPC along with an application under Section 5 of the Limitation Act seeking condonation of delay in filing the said application. The principal plea raised by the appellant was that the written statement could not be filed owing to the negligence of his previous counsel and that he ought not to be made to suffer for the inadvertent lapse on the part of his advocate.

5. The Trial Court, by the impugned order, rejected the aforesaid application after recording that the appellant had been duly served with summons on 07.10.2022, had entered appearance through counsel, had been afforded sufficient opportunity to file the written statement and yet failed to do so for almost eleven months. The Trial Court further observed that the appellant had failed to establish any sufficient cause for his default and had even made an incorrect statement regarding the date of service of summons. It was also noticed that no material had been placed on record to substantiate the allegation of negligence against the previous counsel.

6. Learned counsel appearing for the appellant submits that the Trial Court adopted an unduly technical approach in rejecting the application under



Order IX Rule 13 CPC. It is contended that the appellant had duly engaged a counsel after receipt of summons and had every intention to contest the proceedings. According to the appellant, the previous counsel failed to file the written statement and neglected to take appropriate steps in the proceedings. It is urged that a litigant ought not to suffer for the negligence of his counsel. It is further contended that the appellant has a substantial defence on merits and that the Trial Court lacked territorial jurisdiction to entertain the suit.

7. I have heard learned counsel for the appellant and carefully perused the record.

8. The scope of interference under Order IX Rule 13 CPC is well settled. An ex parte decree may be set aside only if the defendant establishes either that the summons were not duly served or that he was prevented by "sufficient cause" from appearing when the suit was called for hearing. The second proviso to Order IX Rule 13 CPC further clarifies that an ex parte decree shall not be set aside merely on account of any irregularity in the service of summons if the Court is satisfied that the defendant had notice of the date of hearing and sufficient opportunity to appear.

9. The legal position governing applications under Order IX Rule 13 CPC is equally well settled. This Court, in Hira Sweets & Confectionary Pvt. Ltd. v. Hira Confectioners¹ held:-

"11. Insofar as the scope of an application under Order IX Rule 13 CPC is concerned, the Court has to see whether the summons in the suit were duly served or not and/or whether the defendant was prevented by any 'sufficient cause' from appearing when the suit was called for hearing..."

¹2021 (2) HCC (Del) 134.



12. 'Sufficient cause' is an elastic expression and no hard and fast guidelines are prescribed. The Court, in its discretion, has to consider the 'sufficient cause' in the facts and circumstances of every individual case. Although in interpreting the words 'sufficient cause', the Court has wide discretion but the same has to be exercised in the particular facts of the case."

10. In Parimal v. Veena @ Bharti², the Supreme Court held that "sufficient cause" must be construed to mean a cause beyond the control of the party and that negligence, inaction or lack of bona fides cannot constitute sufficient cause for setting aside an ex parte decree. The relevant observations read as under:-

"27. ...in case the matter does not fall within the four corners of Order IX Rule 13 CPC, the Court has no jurisdiction to set aside an ex parte decree. The manner in which the language of the second proviso to Order IX Rule 13 CPC has been couched by the legislature makes it obligatory on the appellate court not to interfere with an ex parte decree unless it meets the statutory requirement."

(emphasis supplied)

11. Likewise, in Bhanu Kumar Jain v. Archana Kumar³, the Supreme Court explained that while considering an application under Order IX Rule 13 CPC, the Court is only required to examine whether sufficient cause existed for the defendant's non-appearance on the relevant date and not to reopen the merits of the underlying dispute.

12. Recently, in A. Murugesan v. Jamuna Rani⁴, while affirming the earlier decision in G.P. Srivastava v. R.K. Raizada⁵, the Supreme Court reiterated as under:-

² (2011) 3 SCC 545.

³ (2005) 1 SCC 787.

⁴ (2019) 20 SCC 803.

⁵ (2000) 3 SCC 54.



“7....Unless 'sufficient cause' is shown for non-appearance of the defendant on the date of hearing, the Court has no power to set aside an ex parte decree. The words 'was prevented by any sufficient cause from appearing' must be liberally construed to enable the Court to do complete justice between the parties, particularly when no negligence or inaction is imputable to the erring party... In a case where the defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional.”

13. Tested on the aforesaid principles, this Court finds no infirmity in the view taken by the learned Trial Court. It is not disputed that the appellant was duly served with summons on 07.10.2022. It is also an admitted position that learned counsel entered appearance on behalf of the appellant on 06.12.2022. Thereafter, notwithstanding the expiry of the prescribed period under Order VIII Rule 1 CPC, the Trial Court granted the appellant a further opportunity on 14.03.2023 to file the written statement. Despite such indulgence, no written statement came to be filed even till 13.09.2023, when the Trial Court closed the appellant's right to file the same, struck off the defence and proceeded to decree the suit under Order VIII Rule 10 CPC.

14. The principal submission advanced on behalf of the appellant is that he ought not to be made to suffer for the negligence of his previous counsel and, therefore, the learned Trial Court ought to have adopted a liberal approach while considering the application under Order IX Rule 13 CPC. There can be no quarrel with the proposition laid down by the Supreme Court in Rafiq & Another v. Munshila⁶, that ordinarily a litigant should not be penalised for the lapse or default of his advocate. However, the said

⁶ (1981) 2 SCC 788



principle cannot be applied in a mechanical manner irrespective of the facts of each case.

15. In the present case, the Trial Court has recorded a categorical finding that the appellant had due notice of the proceedings, had entered appearance through counsel and was afforded sufficient opportunity to file the written statement. The record further reveals that even after the Trial Court granted an additional opportunity on 14.03.2023, the appellant failed to file the written statement in due time. Significantly, learned counsel representing the appellant was also present before the Trial Court on 13.09.2023 when the right to file the written statement was closed and the suit came to be decreed under Order VIII Rule 10 CPC. These findings have not been shown to be either perverse or contrary to the material placed on record.

16. Equally significant is the fact that apart from making a bald allegation of negligence against the previous counsel, no contemporaneous material has been placed on record to substantiate the said plea. As noticed by the Trial Court, the appellant did not place any material to show that any grievance had ever been raised against the previous counsel. The learned Trial Court has also recorded that the application under Order IX Rule 13 CPC incorrectly stated that summons had been served on 14.03.2023, whereas the record showed that service had been effected on 07.10.2022. The aforesaid findings have remained uncontroverted.

17. Learned counsel for the appellant has also contended that the Trial Court lacked territorial jurisdiction to entertain the suit and, therefore, the decree itself is unsustainable. This submission is equally devoid of merit. The present proceedings arise out of dismissal of an application under Order IX Rule 13 CPC. The scope of enquiry in such proceedings is confined to



examining whether summons were duly served or whether the defendant was prevented by sufficient cause from appearing when the suit was taken up. A plea relating to territorial jurisdiction does not fall within the ambit of an application under Order IX Rule 13 CPC and cannot, by itself, furnish a ground to set aside an *ex parte* decree. The said contention, therefore, does not advance the appellant's case.

18. The submission that the appellant has a substantial defence on merits likewise cannot persuade this Court to interfere. Proceedings under Order IX Rule 13 CPC are not intended to reopen the merits of the underlying dispute. Once the appellant has failed to satisfy the statutory requirements prescribed under Order IX Rule 13 CPC, the merits of the defence sought to be raised become wholly immaterial for the purposes of the present appeal.

19. This Court is, therefore, of the considered opinion that the appellant has failed to establish any sufficient cause which prevented him from contesting the proceedings before the Trial Court. No illegality, perversity or jurisdictional error has been demonstrated in the impugned order warranting interference in appellate jurisdiction.

20. Consequently, this Court finds no ground either to condone the delay in filing the present appeal or to interfere with the impugned order dated 25.10.2024 passed by the learned District Judge-03, South-West District, Dwarka Courts. Accordingly, CM APPL. 48239/2026 as well as FAO 226/2026 are dismissed.

21. Pending application, being CM APPL. 48240/2026, also stands disposed of.

MANOJ KUMAR OHRI, J

JULY 28, 2026/rd