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

CNR No. DLHC010745462023

+ **FAO 147/2024**

ZEE S. BEARING CENTRE

REP. BY BAKRUDEEN

.....Appellant

Through: Mr. Prabu Ramasubramaian, Mr. R. Priya, Advocates.

versus

EURASIA BEARING PVT. LTD.

.....Respondent

Through: Mr. Arnav Kumar, Ms. Akanksha Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **21.08.2026**

CM APPL. 25250/2024

1. By way of the present application filed under Section 151 of the Code of Civil Procedure, 1908, the appellant seeks condonation of 131 days' delay in re-filing the present appeal.
2. Learned counsel for the appellant submits that the appeal was initially filed on 11.12.2023 and was returned on 12.12.2023 with certain objections, including with respect to the clarity of the annexures. It is submitted that thereafter the appellant was unwell and remained bedridden for about a month. Upon recovery, it was found that certain supporting documents required for curing the defects were not readily available and some of the documents in the appellant's possession had also been damaged. Consequently, some time was taken in obtaining the requisite documents and curing the defects. It is further submitted that the delay in re-filing was neither intentional nor deliberate.



3. Having regard to the explanation furnished in the application, the delay of 131 days in re-filing the present appeal is condoned.

4. The application stands disposed of.

FAO 147/2024

1. The present appeal has been preferred against the order dated 15.09.2023 passed by the learned Additional District Judge-06, *Tis Hazari Courts, Delhi*, whereby the appellant's application under Order IX Rule 13 CPC seeking setting aside of the *ex parte* judgment and decree dated 24.09.2018 was dismissed.

2. The respondent had instituted a suit for recovery of Rs.13,56,067/- against the appellant in respect of goods supplied between 12.07.2012 and 12.02.2013.

3. Learned counsel for the appellant submits that the appellant was never duly served with the summons of the suit and was consequently prevented from appearing before the learned Trial Court. It is submitted that the summons had been sent to an old address despite the respondent having knowledge of the appellant's changed address. It is further contended that the summons were received by the appellant's father, with whom the appellant claims to have had strained relations, and as a result, the summons were never communicated to him.

4. Learned counsel for the respondent, on the other hand, submits that the summons were duly served at the address available in the respondent's business records and that the receiving bears the stamp of the appellant's proprietorship concern. The respondent accordingly submits that the appellant had knowledge of the proceedings well before the *ex-parte* decree was passed.



5. The scope of an application under Order IX Rule 13 CPC is confined to examining whether the defendant was duly served with summons or, where he was not so served, whether he was prevented by sufficient cause from appearing when the suit was called for hearing. In *Parimal v. Veena @ Bharti*¹, the Supreme Court has held that while the expression “sufficient cause” must receive a liberal construction, the same cannot extend to a party whose conduct demonstrates negligence or want of due diligence. The discretion under Order IX Rule 13 CPC has to be exercised judiciously having regard to the facts and circumstances of each case.

6. In the present case, the record shows that the summons were delivered on 23.05.2017 at 121, Park Street, Aswin Complex, Kattoor, Coimbatore, Tamil Nadu-641009. The summons were received by R. Kaja Hussain, stated to be the father of the appellant's proprietor, and the receiving bears the stamp of the appellant's proprietorship concern.

7. More importantly, on 03.07.2017, the appellant himself caused a legal notice to be issued to the respondent. The said notice specifically referred to the appellant having come to know that a case had been filed against him in New Delhi. Significantly, the address mentioned in the said notice was the same address at which the summons had been served. Thus, even if the appellant's contention that the summons received by his father were not communicated to him is accepted, his own conduct establishes that he had knowledge of the institution of the suit by 03.07.2017.

8. The subsequent plea that the appellant and his father were not on good terms also does not advance the appellant's case. As noticed by the learned Trial Court, no such plea was taken in the application under Order IX Rule

¹ (2011) 3 SCC 545



13 CPC and has been raised subsequently to explain the alleged non-communication of the summons. In any event, once the appellant had acquired knowledge of the institution of the suit, he was expected to take appropriate steps to ascertain the status of the proceedings and enter appearance. No such steps were taken.

9. The contention regarding the change of address is also without merit. The appellant relies upon the changed address to contend that the summons were sent to an old address. However, the very same address at which the summons were served was mentioned by the appellant in his legal notice dated 03.07.2017. The appellant, therefore, cannot contend that the said address was wholly unrelated to him while simultaneously using the same address for communicating with the respondent.

10. The principle laid down in G.P. Srivastava v. R.K. Raizada², is also of no assistance to the appellant. The relevant consideration is whether the defendant was prevented by sufficient cause from appearing on the date when he was proceeded *ex-parte*. In the present case, the appellant had knowledge of the institution of the suit at least by 03.07.2017, yet admittedly took no steps before the concerned Court for more than a year thereafter. Such inaction cannot constitute sufficient cause.

11. The second proviso to Order IX Rule 13 CPC further makes it clear that *an ex-parte* decree cannot be set aside merely on account of an irregularity in service where the defendant had knowledge of the date of hearing and sufficient time to appear and answer the plaintiff's claim. The Supreme Court in Sunil Poddar & Ors. v. Union Bank of India³, has

² (2000) 3 SCC 54

³ (2008) 2 SCC 326



explained the said position. In the present case, as noted above, the appellant's own legal notice establishes knowledge of the institution of the suit well before the decree dated 24.09.2018.

12. The appellant has also sought to rely upon the merits of his defence, including the alleged defective quality of the goods and the debit note. Such issues cannot be examined while considering an application under Order IX Rule 13 CPC. As explained by the Supreme Court in Bhanu Kumar Jain v. Archana Kumar⁴, the grounds available under Order IX Rule 13 CPC are distinct from the grounds on which an *ex-parte* decree may be challenged in a first appeal under Section 96(2) CPC.

13. Viewed cumulatively, the appellant has failed to establish either that the summons were not duly served or that he was prevented by sufficient cause from appearing before the learned Trial Court. The record, on the contrary, establishes that the appellant had knowledge of the institution of the suit much prior to the passing of the *ex-parte* judgment and decree and nevertheless did not take steps to contest the proceedings.

14. Accordingly, this Court finds no infirmity in the impugned order dated 15.09.2023.

15. The present appeal is dismissed.

MANOJ KUMAR OHRI, J

AUGUST 21, 2026

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⁴ (2005) 1 SCC 787