



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

+ **MAC.APP. 118/2022, CM APPL. 18370/2022 & CM APPL. 18371/2022**

Reserved on : 13/04/2022

Date of Decision : 09/05/2022

IN THE MATTER OF:

RAM KUMAR

..... Appellant

Through: Mr. Ayush Gupta & Mr. Ajay
Sharma, Advocates.

Versus

ORIENTAL INSURANCE COMPANY LTD. & ORS. Respondents

Through: Ms. Preeti Kumar, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL. 18372/2022 (Delay)

1. The present application has been filed under Section 5 of the Limitation Act on behalf of the appellant seeking condonation of delay of 3738 days in filing the appeal.

2. By way of the present appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter, referred to as the 'MV Act') read with Order 43 CPC, the appellant, who is the owner of the offending vehicle, has sought the following reliefs:-

“A. Set aside the impugned judgment / award dt. 07/09/2011 passed in suit no. 16397/2011 titled Vida Devi & Anr. Vs. Paramjit & Ors. to the extent wherein recovery



rights have been granted to the Insurance Company against the Petitioner herein / Owner of the vehicle; or

B. Set aside the impugned order dt. 21/12/2021 by Dr. Hardeep Kaur, Additional District and Session Judge PO MACT (SE), Saket Courts, New Delhi whereby the application of the petitioner herein under order 9 rule 13 CPC has been dismissed; and

C. Modify the award dt. 07/09/2011 / order dt. 21/12/2021 and hold that the petitioner herein / owner of the vehicle is not liable to pay the award / compensation amount to the Insurance Company.”

3. Brief facts of the case, as noted by the Tribunal in the impugned order, are as follows:-

“2. Brief facts of the case are that on 26.10.2009, deceased Anjanee along with his fellow rider Kundan was going on motorcycle, bearing registration no. BR 1AC 2454. When they reached near Gurudwara Bala Sahib bus stand, suddenly a blue line bus bearing no. DL 1P B 3588 being driven rashly and negligently by respondent no.1 Paramjit Singh hit the said motorcycle due to which deceased and Kundan along with their motorcycle got dragged for about 10 feet. Despite hitting the motorcycle, the blue line bus did not stop and crushed the deceased resulting in his death. His body was removed to AIIMS Trauma Center where the post mortem was conducted.”

4. A perusal of the case records would show that the appellant was proceeded *ex-parte* and while allowing the claim petition, the Tribunal passed the impugned Award on 07.09.2011, thereby granting recovery rights to respondent No.1/Insurance Company against him.

5. After more than 5 years of the date of passing of the Award, on 15.05.2017, the appellant preferred an application under Order 9 Rule 13 CPC seeking setting aside of the Award, claiming that he was not aware of the proceedings and was proceeded *ex-parte*. In the said application, it



was further claimed that the appellant was assured on behalf of respondent No.1/Insurance Company that the offending vehicle was insured on the date of the accident, and as such, the liability fell on the Company and the appellant need not appear in the matter.

6. During the course of hearing in the present case, learned counsel for the appellant submitted that the appellant came to know of the impugned Award only in April 2017, when some officials visited his house. Pursuant to the same, the appellant engaged a Counsel, who inspected the file from record room on 01.05.2017, and thereafter, the appellant came to know that respondent No.1/Insurance Company had initiated execution proceedings against him. Accordingly, the appellant preferred an application under Order 9 Rule 13 CPC seeking setting aside of the Award.

It was further submitted that during the pendency of the proceedings before the Tribunal, the appellant was falsely assured on behalf of respondent No.1/Insurance Company that he need not come in the further proceedings, as the liability was of the Company. Learned counsel contended that believing such misrepresentation and owing to the fact that he was totally handicapped and bedridden for more than 5 years, the appellant did not appear before the Tribunal. It was stressed that by inspection and enquiry only, the appellant came to know about the impugned Award and his non-appearance in the claim proceedings was unintentional, however, the same was not appreciated by the Tribunal while passing the impugned order.

7. I have heard learned counsel for the appellant and also gone through the material placed on the record.



8. In the present case, the appellant approached this Court by way of an appeal under Section 173 of the MV Act read with Order 43 CPC on 23.02.2022. He has assailed the order dated 21.12.2021 as well as the Award dated 07.09.2011 in the same breath, and the appeal is accompanied by an application under Section 5 of the Limitation Act seeking condonation of delay of over 10 years.

9. Akin to Section 5 of the Limitation Act, the power to condone delay in filing of an appeal against an Award passed by a Motor Accident Claims Tribunal is provided under Section 173 of the MV Act. The provision stipulates:-

“Appeals.-(1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than [one lakh] rupees.”

(emphasis added)

From a reading of the aforesaid provision, it is apparent that insofar as prayers (A) and (C) made in the present appeal are concerned, this Court may grant indulgence to the appellant, despite the impugned



Award having been assailed after expiry of the period of 90 days since passing thereof, provided it is 'satisfied' that the appellant was prevented by 'sufficient cause' from preferring the appeal in time.

10. There is no gainsaying that determining whether or not 'sufficient cause' is made out by an applicant is crucial for deciding an application seeking condonation of delay. In light of the issue, it is deemed apposite to make reference to the decision in G. Ramegowda, Major and Others v. Special Land Acquisition Officer, Bangalore reported as (1988) 2 SCC 142, where the Supreme Court held:-

"14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.; Shakuntala Devi Jain v. Kuntal Kumari; Concord of India Insurance Co. Ltd. v. Nirmala Devi; Lata Mata Din v. A Narayanan; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.
... "

(emphasis added)

11. It is also well-settled that the test of 'sufficient cause' in cases of delay is closely linked to 'reasonableness' and 'conduct of the



party/applicant', as enunciated by the Supreme Court in Balwant Singh (Dead) v. Jagdish Singh and Others reported as **(2010) 8 SCC 685**:-

"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would



normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.”

(emphasis added)

12. The policy behind the term ‘sufficient cause’ has been analyzed by the Supreme Court in a catena of decisions, including Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others reported as **(2013) 12 SCC 649**, where reference was made to the following key observation from Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and Another reported as **(2010) 5 SCC 459**:-

“14. ...The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.”

(emphasis added)

13. In Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai reported as **(2012) 5 SCC 157**, the Supreme Court has highlighted that condonation of delay is a discretionary power of the Court, in exercise of which the *bona fides* of the applicant assume grave importance. In the said decision, it was opined:-

“23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can



neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

(emphasis added)

14. Even when weighed against the principle of equity, the issue of delay has been adjudged by Courts to be of greater significance. In Majji Sannemma alias Sanyasirao v. Reddy Sridevi and Others reported as **2021 SCC OnLine SC 1260**, where the concerned High Court was held to have not exercised its discretion judiciously in condonation of delay of 1011 days, the judicial position on law of limitation in the backdrop of principle of equity was analysed thus:-

“17. In the case of Ramlal, Motilal and Chhotelal (supra), it is observed and held as under:-

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be



light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. ...

18. In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

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21. In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights.”

(emphasis added)

15. Notably, in Brahampal alias Sammay and Another v. National Insurance Company reported as (2021) 6 SCC 512, it was recently observed by the Supreme Court that provisions of Limitation Act, 1963 do not apply while deciding claims under the MV Act, inasmuch as it is a self-contained code which also provides for law on limitation regarding filing of appeals under Section 173 thereof. Be that as it may, the Court referred to judicial dicta wherein the expression ‘sufficient cause’ under



Section 5 of the Limitation Act has been discussed. While distinguishing cases of minor delay from those of inordinate delay, the Court held:-

“16. ...Although this Court has held that provisions of the Limitation Act, 1963 do not apply while deciding claims under the Motor Vehicles Act, but it is relevant to note that even while interpreting “sufficient cause” under the Limitation Act the courts have taken a liberal interpretation. ...

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18. The Court in the abovementioned cases highlighted upon the importance introducing the concept of “reasonableness” while giving the clause “sufficient cause” a liberal interpretation. In furtherance of the same, this Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and the same is attributable to the party’s inaction and negligence, the courts have to take a strict approach so as to protect the substantial rights of the parties.”

(emphasis added)

16. Insofar as the appellant in the present case has claimed that he had no knowledge of the impugned Award having been passed against him until April, 2017, it is deemed expedient to advert to the decision in V.K. Thukral & Ors. v. Lalit & Ors. reported as **2005 (84) DRJ 146**, where a Co-ordinate Bench of this Court observed as follows:-

“8. It is true that in an adversial litigation, clients repose faith in their advocate and having paid the fee and given requisite instructions to their lawyer, a party would be fully justified in being confident that his lawyer would discharge his professional obligations. Therefore, where it is brought on record that a party has done everything in its power to effectively participate in a proceedings, courts



should be liberal in construing sufficient cause and should lean in favor of such party. A litigant does not stand to benefit by lodging appeals at a belated stage. Whenever substantial justice and technical consideration are opposed to each other, cause of substantial justice has to be preferred. Justice oriented approach has to be taken by a court. However, this does not mean that a litigant has a free license to approach the court at it's will."

(emphasis added)

17. Reference may also be made to the decision rendered by another Co-ordinate Bench of this Court in ICICI Lombard General Insurance Co. Ltd. v. Rojida Khatun & Ors. reported as **2015 SCC OnLine Del 10646**, where the importance of assessing *bona fides* of the applicant seeking condonation of delay was reiterated thus:-

"4. Section 5 of the Limitation Act lays down that before the delay is condoned, the applicant must be able to show to the court that he was prevented by 'sufficient cause' from filing the appeal. The 'sufficient cause' has been interpreted as a cause by the courts which is beyond human control. While interpreting the word 'sufficient cause', the Apex Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy; (2013) 12 SCC 649 has observed that the length of the delay is not material but the bona fides of the person in prosecuting the matter are to be seen. In the instant case, details as to when the file was taken by the associate counsel, when it was returned, what was his name and what was the action taken against him and such other relevant details have not been given by the appellant. This appears to be only a concocted story to overcome the delay. In my considered view, the reason given by the insurance company does not constitute 'sufficient cause' for condoning the delay of 147 days in filing the appeal, which stands unexplained. Consequently, the delay is not condoned. Since the delay is not condoned, therefore, the appeal of the insurance company becomes time barred."



18. In light of the fact that the appellant has assailed the dismissal of an application filed under Order 9 Rule 13 CPC, it is considered necessary to also advert to the decision of the Supreme Court in Parimal v. Veena alias Bharti reported as (2011) 3 SCC 545, where it was observed that the second proviso to Order 9 Rule 13 CPC makes it obligatory for the appellate Court to not interfere with an *ex parte* decree unless it meets the statutory requirements. Relevant excerpt from the decision is extracted hereunder:-

“12. It is evident from the above that an ex parte decree against a defendant has to be set aside if the party satisfies the Court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court. The legislature in its wisdom, made the second proviso mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.

13. "Sufficient Cause" is an expression which has been used in a large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient



ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. (Vide Ramlal v. Rewa Coalfields Ltd., Sarpanch, Lonand Grampanchayat v. Ramgiri Gosavi, Surinder Singh Sibia v. Vijay Kumar Sood and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn.)

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16. In order to determine the application under Order 9 Rule 13 CPC, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application.

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26. The first appellate court should not disturb and interfere with the valuable rights of the parties which stood crystallised by the trial court's judgment without opening the whole case for re-hearing both on question of facts and law. More so, the appellate court should not modify the decree of the trial court by a cryptic order without taking note of all relevant aspects, otherwise the order of the appellate court would fall short of considerations expected from the first appellate court in view of the provisions of Order 41 Rule 31 CPC and such judgment and order would be liable to be set aside. (Vide B.V. Nagesh v. H.V. Sreenivasa Murthy.)

27. ... approach of the Court while dealing with such an application under Order 9 Rule 13 CPC would be liberal and elastic rather than narrow and pedantic. However, in case the matter does not fall within the four corners of Order 9 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 9 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 added)

19. Subsequently, in Bhivchandra Shankar More v. Balu Gangaram More and Others reported as (2019) 6 SCC 387, it has been held as follows:-

“11. It is to be pointed out that the scope of Order 9 Rule 13 CPC and Section 96(2) CPC are entirely different. In an application filed under Order 9 Rule 13 CPC, the Court has to see whether the summons were duly served or not or whether the defendant was prevented by any “sufficient cause” from appearing when the suit was called for hearing. If the Court is satisfied that the defendant was not duly served or that he was prevented for “sufficient cause”, the court may set aside the ex parte decree and restore the suit to its original position. In terms of Section 96(2) CPC, the appeal lies from an original decree passed ex parte. In the regular appeal filed under Section 96(2) CPC, the appellate court has wide jurisdiction to go into the merits of the decree. The scope of enquiry under two provisions is entirely different. ...”

(emphasis added)

20. The view taken in Bhivchandra Shankar More (Supra) has been affirmed by the Supreme Court in N. Mohan v. R. Madhu reported as (2020) 20 SCC 302, where it was opined:-

“10. When an ex parte decree is passed, the defendant has two remedies – (a) Either to file an application under Order 9 Rule 13 CPC to set aside the ex parte decree by satisfying the court that the summons was not served or if served, the defendant was prevented by “sufficient cause” from appearing in the court when the suit was called for hearing; (b) to file a regular appeal from the original



decree to the first appellate court in terms of Section 96(2) CPC and challenge the ex parte decree on merits.”

(emphasis added)

It is observed that while computing the delay in filing of the first appeal, which came to about 546 days, the Supreme Court in N. Mohan (Supra) took into account the time spent by the appellant in pursuing the proceedings under Order 9 Rule 13 CPC and held that a further delay of about 270 days was caused on account thereof.

21. From the judicial decisions on the issue involved in the present case, the position of law is discernably well-settled to the extent that an inordinate delay cannot be condoned by this Court in exercise of its discretionary power, unless ‘*sufficient cause*’ is made out. It does not suffice for an applicant, seeking indulgence of this Court to condone an inordinate delay, to merely raise bald averments. The ‘*sufficient cause*’ sought to be raised has to be explained and the same must ‘*satisfy*’ this Court. The said satisfaction would be arrived at on the basis of material brought on record, and it may be imprudent to take the words of an applicant approaching the Court belatedly on face value.

22. Coming to the present case, it is noted that the impugned Award/*ex-parte* decree was passed by the Tribunal in the year 2011. The appellant filed an application under Order 9 Rule 13 CPC seeking setting aside of the same in the year 2017, i.e., after a delay of more than 5 years. The impugned order, whereby the said application of the appellant came to be dismissed, was passed in the year 2021. The appellant approached this Court against the impugned Award as well as the impugned order in the year 2022. In view of the decision in N. Mohan



(Supra), concededly, there is a delay of over 10 years in filing of the present appeal.

23. Though the appellant has claimed that he was proceeded *ex-parte* before the Tribunal and had no knowledge of the impugned Award having been passed, it is noteworthy that he was duly served and had also filed a reply before the Tribunal and denied liability, but stopped participating in further proceedings.

24. From the application filed under Order 9 Rule 13 CPC before the Tribunal and the present proceedings, it is apparent that the appellant has raised the same cause for non-appearance. He claims to have remained *ex-parte* on account of the alleged false assurance given by respondent No.1/Insurance Company, which was statedly believed in view of the appellant being physically challenged. In this regard, it is worthwhile to observe that in response to the application filed by the appellant under Order 9 Rule 13 CPC, respondent No.1/Insurance Company had filed a reply, thereby strenuously opposing the claim that anyone on behalf of the Company had given assurance to the appellant in connection with the case and/or asked him to not appear in the proceedings.

25. Indisputably, the appellant has given reasons to explain his non-appearance. However, the same being unsubstantiated and vague do not '*satisfy*' this Court. Suffice it to state, only a bald claim to the effect that he did not appear on the assurance of respondent No.1/Insurance Company has been made, without bringing on record any supporting material in that regard. The application seeking condonation of delay is lacking in material details, including relevant dates and particulars of the representative of the Insurance Company who allegedly gave the



appellant false assurance, which render the cause shown by the appellant open to suspicion.

26. Further, though the appellant has claimed that he had suffered a paralytic attack in the year 2012, whereafter he could neither walk on his own nor speak properly, no medical document in support of the claim is available on the record.

27. In this backdrop, this Court is of the view that the appellant did not do everything in his power to participate in the proceedings before the Tribunal, and was thoroughly negligent in timely pursuing the remedy available to him under law. This Court also cannot lose sight of the fact that due to the course adopted by the appellant, over 10 years have elapsed since passing of the impugned Award.

28. So far as prayer (B) made in the present appeal is concerned, it is noted that when the appellant approached the Tribunal with an application under Order 9 Rule 13 CPC, two questions, i.e., i) whether the appellant was duly served with summons or not, and ii) whether or not he had '*sufficient cause*' for non-appearance at the relevant time, were framed by the Tribunal in consonance with the settled legal position recently surmised in Bhivchandra Shankar More (Supra). The appellant was given a chance to lead evidence and the same was availed of by him. Regardless, he failed to satisfy the Tribunal on the issues/questions framed, including existence of '*sufficient cause*' for his remaining *ex-parte*, and the Tribunal decided against the appellant on both the questions.

29. Considering the fact that no material was placed on record by the appellant to explain the cause for his remaining *ex-parte*; the further fact



that since passing of the impugned Award, substantial rights had accrued in favour of respondent No.1 by the time the appellant preferred an application under Order 9 Rule 13 CPC; and for the reasons recorded in the impugned order, this Court is of the view that the Tribunal rightly dismissed the said application.

30. Keeping in view the aforesaid, this Court finds no merit in the application and the same is accordingly dismissed.

MAC. APP. 118/2022

In view of the order passed in CM APPL. 18372/2022, present appeal is dismissed. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

MAY 9, 2022