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

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Date of decision: July 13, 2022

+ **FAO (COMM) 86/2022 & CM APPL. 25458-460/2022**

SYNERGYTECH AUTOMATION PVT LTD
& ANR.

..... Appellants

Through: Mr. Harikesh Anirudhan, Advocate.
versus

M/S SMC CORPORATION (INDIA) PVT.
LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. By virtue of the present appeal, Appellant-original Defendant before learned trial court, has impugned the judgement dated 16.12.2021 (hereinafter referred as the “**impugned judgment**”) passed by learned trial court dismissing its application under Order IX Rule 13 of The Code of Civil Procedure, 1908 (hereinafter referred as the “**Code**”) for setting aside ex-parte judgment and decree dated 22.02.2020 (hereinafter referred as the “**ex-parte decree**”).

2. In the present appeal the sole issue for adjudication before us is “*Whether the appellant was able to show that it was prevented by sufficient cause from not appearing before the learned trial court?*” For this, we have considered the arguments addressed by the learned counsel for appellant



based on the material on record before us coupled with the conduct of appellant before the learned trial court.

3. Respondent-original Plaintiff before learned trial court instituted a suit for recovery of Rs. 43,08,000/- under Order XVII of Code against appellant on 14.07.2007. Upon service, appellant entered appearance on 12.12.2017. Finding appearance of appellant not proper, vide judgment dated 18.01.2018 learned trial court decreed the said suit in favour of the respondent. Challenge thereto by appellant (RFA NO. 354/2018 titled as *M/s. Synergy Tech Automation Pvt. Ltd. Vs. M/s. SMC Pneumatic India Pvt. Ltd.*) was allowed by this court vide order dated 04.07.2018 thereby remanding back the suit to be treated as an ordinary suit and directing the parties to appear before District & Sessions Judge, Delhi on 08.08.2018. Accordingly, appellant appeared on 08.08.2018 and again on 20.08.2018 before the designated court, but the latter appearance was recorded by Reader as learned Judge was on leave. Thereafter, appellant failed to appear since 25.02.2019 till the passing of ex-parte decree dated 22.02.2020.

4. On coming to know of the ex-parte decree, the appellant filed applications under Order IX Rule 13 of Code and under Section 5 of The Limitation Act, 1963 (hereinafter referred to as the “**Section 5 application**”) seeking condonation of delay. Upon service, the learned counsel for respondent appeared and chose to argue and oppose both applications without filing replies thereto. Learned trial court heard both applications together and after hearing both parties, for reasons stated in the impugned order, first allowed the Section 5 application and then proceeded to hear the application under Order IX Rule 13 of Code.



5. In application under Order IX Rule 13 of Code appellant sought condonation of *61 days* contending that such delay occurred because of lack of knowledge of ex-parte decree by pleading that it became aware of the ex-parte decree through Sunderlal Sawji Urban Co-op Bank Limited in December 2020 as everything in Maharashtra was closed till end of October 2020 due to COVID-19; it was going through a financial crunch; it was unable to depute anyone to visit Delhi to meet its Counsel; and lastly its counsel drafted the application in February 2021.

6. Vide impugned judgment dated 16.12.2021, the learned trial court dismissed aforesaid application under Order IX Rule 13 of Code with cost of Rs. 20,000/- agreeing with contentions of learned counsel for respondent to the effect that the appellant, despite gaining knowledge in December 2020 appellant contacted its counsel only in January 2021; and despite application under Order IX Rule 13 of Code being ready on 02.02.2021 it was filed only on 02.03.2021 and accordingly holding that appellant failed to explain as to how it received information/ knowledge of decree; appellant failed to explain the delay of two months for its counsel to prepare and one month thereafter to file application under Order IX Rule 13 of Code; appellant failed to show any 'sufficient cause' for its non-appearance as it neither disclosed the name of its deputed employee nor filed his suspension letter; failed to explain its acts, which were contrary to order dated 04.07.2018 passed by this court in earlier round of litigation in presence of its counsel; and lastly appellant failed to explain delay for entire period of one year and six months, during which proceedings were pending before the learned trial court. This has now led to present round of litigation before us.

7. The provisions of Order IX Rule 13 of Code read as under:



“SETTING ASIDE DECREES EX PARTE

13. Setting aside decree ex parte against defendant

In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an Order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an Order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

PROVIDED that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendant also:

PROVIDED FURTHER that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.



Explanation : Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule of setting aside the ex parte decree.”

8. While dealing with the expression ‘sufficient cause’ involving Order IX Rule 13 of Code proceedings, Hon’ble Supreme Court in ***Parimal v Veena Alias Bharti: (2011) 3 SCC 545*** has held as under:

"13. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much 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 view point 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 RFA(OS) No.4/2015 & 5/2015 Page 10 of 11 "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 & Ors. v. Rewa Coalfields Ltd., AIR 1962 SC 361; Sarpanch, Lonand Grampanchayat v. Ramgiri Gosavi & Anr., AIR 1968 SC 222; Surinder Singh Sibia v. Vijay Kumar Sood, AIR 1992 SC 1540; and Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation & Another, (2010) 5 SCC 459).

14. In Arjun Singh vs. Mohindra Kumar this Court observed that every good cause is a sufficient cause and must offer an explanation for non-appearance. The only difference between a “good cause” and “sufficient cause” is that the requirement of a good cause is complied with on a lesser degree of proof than that of a “sufficient cause”. (See also Brij Indar Singh vs. Kanshi Ram, Mahindra Land and Building Corpn. Ltd, vs. Bhutnath Banerjee and Mata din vs. A. Narayanan.)

15. While deciding whether there is sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the



court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it.

16. 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. There 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.”

9. While dealing with the same expression involving Order IX Rule 13 of Code proceedings, Hon’ble Supreme Court in case of **G.P. Srivastava v R.K. Raizada & Others: (2000) 3 SSC 54** has also held as under:

“7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any “sufficient cause” from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case 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. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalized for his previous negligence which had been overlooked and thereby condoned earlier. 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. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.”



10. Order IX rule 13 of Code postulates that for setting aside an ex-parte decree a party has to satisfy the court of having been duly served with summons of the suit wherein the said ex-parte order has been passed against it or that it was prevented by any ‘sufficient cause’ from appearing when the said suit was being heard before court. The expression ‘sufficient cause’ is oft-used which means a ‘good cause’ with a backing, i.e. which is supported by a plausible explanation and reasoning to the satisfaction of the court. The expression ‘sufficient cause’ is a widely known ‘legal terminology’ finding mention in *The Income Tax Act, 1961*, *The Limitation Act, 1963*, *The Insolvency and Bankruptcy Code, 2016*, *The Limited Liability Partnership Act, 2008* and *The Narcotic Drugs and Psychotropic Substances Act, 1985*. In all the above Acts the expression ‘sufficient cause’ has the same meaning. Another very vital aspect to be borne in mind while dealing with the expression ‘sufficient cause’, especially while dealing with Order IX rule 13 of Code is the ‘conduct’ of the party seeking relief and the surrounding facts and circumstances as they have a pivotal role to play.

11. Learned counsel for appellant has *agitated but not argued* that as respondent concealed material facts, while instituting suit under Order XXVII of Code and whence this court remanded the suit to be treated as an ordinary suit, it is guilty of *suppresio veri* and *suggestion falsi* and that the products supplied by respondent were faulty. As the aforesaid issues have no bearing on facts before us and have already been dealt with and settled after due adjudication by the learned trial court, the same cannot come to the rescue of the appellant for purposes of adjudication of present appeal and thus fail.



12. Learned counsel for appellant has next contended that non-appearance of appellant before learned trial court was due to inaction of its counsel and as its deputed employee failed to follow-up the pending proceedings and further that appellant was under impression of its nominated counsel defending it before learned trial court. Appellant has failed to file iota of proof substantiating any of the above, particularly as it has not divulged whether it retained or changed counsel and what prompted or and who contacted its counsel and if so, when. Further, belated termination by appellant of its so-called deputed employee on 10.02.2021 is clearly an afterthought concocted only to build up a flimsy story, more so whence it failed to file any document qua suspension of its employee before the learned trial court. Having no bearing on facts before us, same cannot come to the rescue of the appellant for the purposes of present appeal and thus fail.

13. Learned counsel for the appellant has next *rightly* contended it is a settled law that a party must not suffer due to the inactions of its counsel, especially where party has diligently taken all safeguards. As appellant has miserably failed to show any inaction on the part of its counsel at any stage which caused suffering to it and that the appellant diligently took all safeguards, it cannot derive any benefit therefrom. Appellant is thus not entitled to any benefit thereof and said contention also fails.

14. Learned counsel for the appellant has next *agitated but not argued* that learned trial court has erroneously proceeded with the case without scrutinizing it and respondent through clever drafting invoked territorial jurisdiction. Aforesaid issues have no bearing on facts before us and have already been dealt with and settled after due adjudication by the learned trial court. Despite thereto this court finds that a bare perusal of documents



before us reveal that though the respondent instituted a suit for recovery of Rs. 43,08,000/- before the learned trial court, on 22.02.2020 it has passed an ex-parte decree of recovery of Rs. 29,25,407/- alongwith interest, which is lesser than what was claimed by the respondent after hearing its counsel and conducting an ex-parte trial for almost *eighteen months* upon carefully scrutinizing everything before it. As the said ex-parte decree is not under challenge before us the said contention that the learned trial court has erroneously proceeded with the case without scrutinizing it and respondent through clever drafting invoked territorial jurisdiction also fails. Furthermore, having no bearing on facts before us, same cannot come to the rescue of the appellant for the purpose of present appeal and thus also fail.

15. As per above, the ‘conduct’ of the appellant in the present case, involving the earlier round of litigation before this court and the instant round of litigation before us, has at all stages been doubtful and unworthy to say the least as it has continuously been ringing bells. In its application under Order IX rule 13 of Code appellant on one hand claims to be “...
...one of the market leaders in the automation industry... ..” who “...
...enjoys great reputation in view of its quality services” while on the other hand to take shelter under the provisions of Order IX Rule 13 of Code claims to have deputed only one employee for overseeing the case right from start and that too after having faced an earlier judgment against it. In present case, neither actions nor words of the appellant inspire no confidence, more so as they are bereft of any proof. Rather repeated lack of substantiation of its claim/s and its cavalier attitude towards these case at all times/ stages, since its inception smacks of willful callousness, negligence, non-serious attitude, laxity and in fact expose its hollowness from time to



time. Though the appellant has pleaded of coming to know about ex-parte decree through bank in December 2020 but has failed to give any details, barring name, of said Bank or concerned person and has not filed any affidavit of concerned person, if any. Similarly, before us also though the appellant has relied upon orders dated 08.08.2018 and 20.08.2018 it has not filed them before us. All these cast suspicion and raise repeated concerns in our mind upon the conduct of the appellant. We have no qualms in holding that the appellant is a habitual defaulter who is good in building stories.

16. Thus in view of the conduct of the appellant and in view of the appellant having failed to show any 'sufficient cause' to satisfy this court for its not appearing before the learned trial court and in view of the settled law on the subject, we find no merit in the present appeal. This court thus finds no infirmity, perversity or illegality in the impugned judgment passed by learned trial court which require interference in present appeal.

17. Appeal is accordingly dismissed with further cost of Rs.25,000/- to be paid to **"The Delhi High Court Lawyers Welfare Fund"** in addition to earlier cost of Rs.20,000/- imposed by learned trial court vide impugned judgment.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

July 13, 2022/So