

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

FAO 58/2023

Date of Decision: 13.04.2023

IN THE MATTER OF:

UMANG SAHAI AGGARWAL

..... Appellant

Through: Ms.Suruchi Aggarwal,
Sr.Advocate with Mr.Sandesh
Kumar and Mr.Manish Kumar
Vikkey, Advocates with appellant
in person.

versus

JAI PRAKASH AND ANR

..... Respondents

Through: Ms.Mrinalini Sen, Standing
Counsel for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM.APPL No.12122/2023

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

FAO 58/2023 & CM.APPL No.12121/2023

1. By way of the present appeal filed under Order 43 Rule 1 CPC, the appellant/defendant No.1 seeks setting aside of order dated 14.12.2022 passed by the learned ADJ-08, Central District, Tis Hazari Courts, Delhi in Misc. DJ No.320/2020 in New Suit No.08/2007 (Old Suit No.2261/1997) whereby his application under Order 9 Rule 13 read with Section 151 CPC was dismissed.

2. Ms. Suruchi Aggarwal, learned Senior Counsel appearing for the appellant has contended that inasmuch as the Trial Court held the appellant liable for the conduct of his erstwhile counsel, it has not appreciated the facts in correct prospective. It is submitted that though the Trial Court observed that the appellant himself was a qualified advocate, it failed to appreciate that he was not a practicing advocate and only appears before the Income Tax Tribunal.

3. To appreciate the contention raised on behalf of the appellant, brief recapitulation of the facts is necessary. Respondent No.1/plaintiff had preferred the underlying suit for specific performance, injunction and recovery of money, thereby claiming that the appellant had executed a Receipt-Cum-Agreement dated 05.01.1994 in his favour with respect to $\frac{1}{4}$ undivided share in *land measuring 4 bighas 11 biswas in Khasra No.118, situated in Village Khera, Green Park, New Delhi.*

4. The impugned order records that on filing of the plaint, the appellant was served on 23.04.1998 by way of affixation. A counsel engaged by the appellant filed his *vakalatnama* as well as appeared on 09.09.1998. Thereafter, neither the appellant/his counsel appeared nor any written statement was filed on his behalf. Accordingly, on 23.05.2000, the appellant was proceeded *ex-parte* by following order:

"23.05.2000

*Present: Mr.Sanjay Sud for counsel for plaintiff.
Ms.Indermeet Sidhu counsel for defendant No.2.*

Suit No.2261/97 & IA 10445/97

Neither written statement has been filed nor any one is present on behalf of defendant No.1. Defendant No.1 is proceeded ex parte. Replication to the written statement of defendant No.2

has not been filed. At request, last opportunity is given to file replication within four weeks. Put up before the J.R. on 20th September, 2000 for admission/denial of the documents."

5. As the appellant remained unrepresented, the concerned Court passed an *ex-parte* decree on 11.09.2007. Aggrieved, the appellant preferred an application under Order 9 Rule 13 read with Section 151 CPC thereby seeking setting aside of the *ex-parte* decree and *ex-parte* proceedings dated 23.05.2000. Another application under Section 5 of the Limitation Act was also preferred by the appellant, seeking condonation of delay in filing the application under Order 9 Rule 13 read with Section 151 CPC. In the said application, it was stated that the appellant had duly engaged a counsel who got signed a *vakalatnama* and assured the appellant that he would appear. It was averred that the said counsel had assured the appellant that he need not appear as the matter was civil in nature. It was further averred that the said counsel had got drafted a written statement which was also stated to have been filed.

The appellant claimed that he often made enquiry from his counsel but was always misled about the status and dates of the case. On 02.09.2003, the appellant statedly met a junior of the counsel engaged by him who stated that the suit filed by respondent No.1 had been dismissed. Believing such statement, the appellant did not enquire any further. It was claimed that only on 29.08.2020, the appellant met respondent No.1 who informed him about passing of the decree on 11.09.2007 as well as execution of the sale deed through the Court.

6. In his reply filed to the appellant's application, respondent No.1 claimed that after passing of the decree dated 11.09.2007, he had

initiated execution proceedings in which the appellant again did not appear and the sale deed was executed against the appellant through the Court.

7. Before proceeding further, reference in connection with the scope of present appeal is made to decision of this Court in H. P. Singh (Harvinder Pal Singh) v. Sh. Jasbir Singh & Ors., **FAO 64/2022** rendered on 10.03.2023. Relevant extracts of the said judgment read as follows:

"7. The short question which arises for consideration before this Court is whether the appellant has been able to make out a case of "sufficient cause" for non-appearance, as required in terms of Order 9 Rule 13 CPC.

8. Insofar as the scope of an application under Order 9 Rule 13 CPC is concerned, it is now well-settled that 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.

9. "Sufficient cause" is an elastic expression and no hard and fast guidelines are prescribed to define it. Although the Court has wide discretion in interpreting the words "sufficient cause", the same has to be exercised according to the particular facts and circumstances of the case.

*10. At this stage, reference may profitably be made to Sudarshan Sareen v. National Small Industries Corporation Ltd. and Anr. reported as **2013 SCC OnLine Del 4412**, where a Division Bench of this Court held the appellant therein to have been willfully negligent in not appearing and rejected his prayer for setting aside dismissal of his application under Order 9 Rule 13 CPC. The Court relied on a passage from Parimal v. Veena alias Bharti reported as **(2011) 3 SCC 545**, where the expression "sufficient cause" was interpreted as under:*

"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 the 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.*, *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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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. (Vide *State of Bihar v. Kameshwar Prasad Singh, Madanlal v. Shyamlal, Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd.*, *Ram Nath Sao v. Gobardhan Sao, Kaushalya Devi v. Prem Chand, Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd. and Reena Sadh v. Anjana Enterprises.*)

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 defense. 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.”

11. It would be apposite to also advert to A. Murugesan v. Jamuna Rani reported as (2019) 20 SCC 803. In the said case, the Supreme Court affirmed its earlier view taken in G.P. Srivastava v. R.K. Raizada and Others reported as (2000) 3 SCC 54, which is reproduced hereunder:

“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 penalised 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.””

8. As noted above, after being duly served on 23.04.1998, the appellant appeared through his counsel on 09.09.1998, whereafter, not only he continued to remain unrepresented but even written statement was not filed. He was proceeded *ex-parte* on 23.05.2000, and thereafter, *ex-parte* decree came to be passed on 11.09.2007. The application was filed by the appellant after a period of nearly 13 years from the date of the decree.

9. To justify his non-appearance, the appellant blamed his erstwhile counsel but failed to justify his own callousness over such a long period of time. Notably, the appellant had not appeared even once since he was served on 23.04.1998. The entire delay of 13 years after passing of the *ex-parte* decree is sought to be justified by blaming the erstwhile counsel. The Trial Court has noted that though the appellant stated that he was misled about the dismissal of the suit by one junior counsel, no details of any such counsel were mentioned.

10. It is further pertinent to note that along with present appeal, a copy of the complaint dated 02.09.2020 addressed by the appellant to the Chairman, Bar Council of Delhi has been annexed, however the same appears to be an afterthought as neither any proof of posting receipt of the complaint has been placed on record, nor reference of any date is found mentioned in the application filed under Order 9 Rule 13 read with Section 151 CPC. In fact, a perusal of the applications filed by the appellant before the Trial Court would show that the complaint allegedly

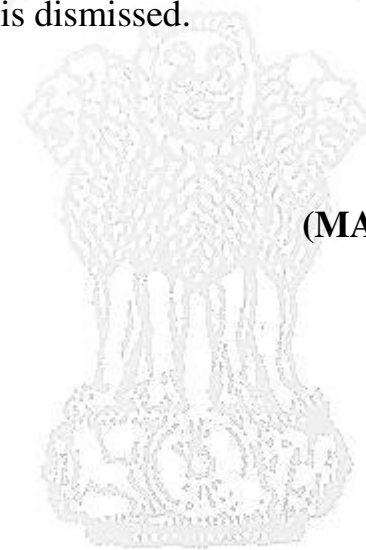
filed before the Bar Council was not even annexed alongwith the applications.

11. The appellant has failed miserably to make out a case of “sufficient cause” for his non-appearance for a period of about 13 years after passing of the *ex-parte* decree. The explanation given is sham and rather a cover up for his own negligence.

12. In the opinion of this Court, the Trial Court was right in dismissing the appellant's application in such facts. Accordingly, the impugned order is upheld and the appeal is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 13, 2023/v



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