

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

FAO 110/2023

Date of Decision: 04.05.2023

IN THE MATTER OF:

M/S ONICRA CREDIT RATING AGENCY INDIA LTD. Appellant
Through: Mr. Mukesh Vatsa, Advocate

versus

ROHAN KUMAR Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 22674/2023 (exemption)

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

FAO 110/2023 and CM APPL. 22673/2023 (Stay)

1. By way of the present appeal filed under Section 104 CPC, the appellant seeks setting aside of order dated 10.01.2023 passed by the learned ADJ-02, South West, Dwarka Courts, Delhi in MISC DJ ADJ 86/2020 dismissing its application filed under Order 9 Rule 13 CPC.

2. The necessary facts for disposal of the present appeal are that the respondent/plaintiff filed a suit for recovery alongwith the *pendente lite* and future interest etc.

3. In the plaint, it was claimed that the respondent was an ex-employee of the appellant company. He was appointed vide appointment letter/agreement dated 30.06.2015 and remained in service from 08.09.2015 to 06.09.2016 as Dy. General Manager at a salary of Rs.1,65,000/- per month. It was further claimed that his salary was revised to Rs. 1,74,733 w.e.f. 01.04.2016 vide increment letter dated 25.05.2016. Feeling aggrieved by the non-payment of the revised salary, the underlying suit came to be filed.

The appellant/defendant was proceeded *ex-parte* vide order dated 28.11.2017 whereafter the *ex-parte* decree came to be passed on 06.04.2019. On being served with the demand notice, the appellant preferred the captioned application which came to be dismissed by the Trial Court vide the impugned order.

4. Learned counsel for the appellant contended that there was no clear proof of the appellant being served with the summons in the trial. The Trial Court failed to appreciate the same and passed the impugned order.

5. A perusal of the plaint would show that the same was filed mentioning the appellant's registered address in Delhi. In the application under Order 9 Rule 13 CPC, the appellant admitted that the address provided in the memo of parties is its registered address. It was further admitted that in the first week of August, 2017, the summons issued by the Court were received by one *Mr. Hari Nath*, a Senior Executive in the

appellant's Accounts Department. It was further stated that as the appellant was in the process of shifting its Accounts staff from registered office in Delhi to his new office at NOIDA, the notice received by *Mr. Hari Nath* was misplaced. It is only when an email was received on 02.02.2020, containing the demand notice for recovery of Rs.4,15,452/-, the appellant came to know about the passing of the impugned order whereafter the subject application was filed.

6. In the above factual matrix, the only issue that needs to be answered is that whether the appellant has been able to make out a case of “*sufficient cause*” for its non-appearance before the Trial Court, as required in terms of Order 9 Rule 13 CPC.

7. At this juncture, this Court may profitably refer to its decision 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:

"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.”

8. 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.”

9. The fact of the present case, when seen in the light of the aforesaid position of law, establishes that concededly, the appellant was duly served with the summons in the suit. The explanation sought to be provided for the appellant's non-appearance is shifting of the office and misplacing the summons in the process. Admittedly, the summons were received by none other than a Senior Executive in the appellant's registered office. The explanation offered is vague and flimsy. Such an explanation shows that the appellant had rather been negligent. Apparently, the appellant took no steps after receiving the summons and filed the subject application after nearly two and a half years on being proceeded *ex-parte*. The relief sought in the appeal is discretionary and depends on the explanation given, which in the present case does not qualify as “*sufficient cause*”.

10. Accordingly, the impugned order is upheld and the appeal is dismissed alongwith the pending application.

(MANOJ KUMAR OHRI)
JUDGE

MAY 04, 2023

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