



2025:DHC:7905



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 12.08.2025***+ **MAC.APP. 314/2022**

M/S LAULS PVT LIMITED

.....Appellant

Through: Mr. Arvind Chaudhary, Advocate.

versus

SMT GEETA & ORS.

.....Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 6.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The brief issue that arises in the present Appeal is that recovery rights have been granted against the Appellant/owner by the learned Tribunal in view of the fact that the Appellant did not produce either the driving licence, fitness certificate or the relevant documents evidencing that there was no breach in the insurance policy.

2. Learned Counsel for the Appellant fairly concedes that although a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 [hereinafter referred to as the "CPC"] was served on the Appellant, these documents could not be produced.

2.1 It is the case of the Appellant that the notice under Order XII Rule 8 of the CPC was received by the Appellant on 23.05.2022, however, before the Appellant could take any steps, the *ex-parte* judgment was passed by the learned Tribunal on 24.05.2022 [hereinafter referred to as the "Impugned



Judgment”].

2.2 Learned Counsel for the Appellant submits that thereafter, an application under Order IX Rule 13 of the CPC was also filed by the Appellant setting out these averments along with these documents, wherein, it was stated that the recovery rights have been granted on the premise that the documents had not been produced. However, the learned Counsel submits that the (i) fitness certificate; (ii) permit of the offending vehicle; and (iii) driving licence were available and there was no violation of the terms of the insurance policy. Learned Counsel for the Appellant seeks to rely upon these documents being Driving Licence, i.e., Certificate of Fitness of Vehicle No HR38U2381, Authorisation Certificate of N.P. (Goods) and Tax Receipt dated 07.04.2018, which are annexed with the present Appeal, in this behalf.

3. None appears for Respondent No.8/Insurance Company despite the matter being called out twice. Learned Counsel for the Appellant submits that the Execution Proceedings are pending before the learned Tribunal for long in view of the recovery rights granted.

4. Learned Counsel for Respondent Nos.1 to 6/Claimants submits that the issue in the present Appeal is only between the Respondent No.8/Insurance Company and the Appellant/owner as the Respondent Nos.1 to 6/Claimants have already received the entire awarded amount.

5. Learned Counsel for the Appellant, on instructions, submits that he does not wish that the Impugned Judgment be set aside to the extent that the compensation as awarded by the learned Tribunal be not disturbed. However, only on the aspect of the recovery rights, he may be given an



opportunity to submit his case which he was denied by the learned Tribunal.

6. The record reflects that by order dated 15.07.2022 passed by the learned Tribunal, that an application under Order IX Rule 13 of the CPC, which was filed seeking setting aside of the Impugned Judgment by the Appellant was dismissed by the learned Tribunal with a finding that since the blame has been put on the counsel who has given wrong advice, sufficient cause has not been shown by the Appellant.

7. A review of the Application under Order IX Rule 13 of the CPC filed by the Appellant [hereinafter referred to as “Application”] shows that the Appellant has in the Application set out that the Appellant had appointed an Advocate, who appeared on 07.02.2019, and had been diligently following up with the Counsel. It further states that on account of the ensuing Covid-19 pandemic, the Appellant has averred that there was no progress in the case. It further sets out that it was only when a Notice under Order XII Rule 8 of the CPC was received by the Appellant on 23.05.2022 in relation to the matter that the Appellant asked another Counsel to check up the status of the case and found that an *ex-parte* award had already been passed on 24.05.2022.

8. The Appellant also clearly sets out in this Application that the Appellant had a valid insurance policy, permit and that the driver had a valid licence, all of which were handed over to their Counsel and that these documents had also been filed along with the Application. The relevant extract of this Application is set out below:

“3. That the respondent Nos. 1 & 2 were served with the summons of the present case, and they appointed an Advocate, Ms. Akansha Arora, who appeared on 07.02.2019 and filed her vakalatnama on behalf of the



respondent Nos. 1 & 2. It is a matter of record that all the Courts at Delhi stopped functioning with effect from 16 March 2020 due to the wide spread of COVID-19 pandemic.

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5. That the respondent No.2 had on several occasions followed up with their duly appointed counsel but were always informed that nothing substantial was happening in the proceedings as the matters were being simply adjourned due to the ongoing COVID- 19 pandemic.

6. That the respondent No. 2 received a notice under Order XII Rule 8 CPC through speed post on 23.05.2022, whereafter it tried to contact their duly appointed counsel, but she had not been taking their phone calls. The respondent No. 2. therefore, requested another counsel, who had been assisting the respondent No. 2 in various other cases in Haryana, who checked up the status of the present case online in the first week of June 2022, where it transpired that an ex-parte decree award in favour of the petitioners and against respondents.

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11. That the respondent No. 2 at the time of engaging their counsel had handed over a copy of a valid driving license of the respondent No. 1 alongwith the permit and fitness certificate so that the same could have been filed before this Hon'ble Court. A copy of the valid driving license of respondent No. 1 is annexed as Annexure-B and the permit and the fitness certificate of the offending vehicle are annexed as Annexure C & D respectively. However, for reasons best known to the said counsel, these documents were not filed before this Hon'ble Court.

12. That a perusal of the aforesaid documents would demonstrate that the driver of the offending vehicle was holding a driving license and that the vehicle alleged involved in the accident was also having a valid permit and fitness certificate, meaning thereby that the respondent No. 2 had not violated any of the conditions of the insurance and thus the liability to pay compensation would be entirely upon the insurance company.

13. That the sole basis to award recovery rights by this Hon'ble Court is on the premise that the respondent Nos. 1 & 2 had failed to produce the fitness certificate, permit of the commercial vehicle belonging to respondent No. 2, which tantamount to violation of the terms of the insurance policy. It has been further held that the respondent No. 1, who was the driver of the offending vehicle was not holding a valid driving license as the police had filed a chargesheet against the driver under section 3 and 181 of the Motor Vehicles Act."

[Emphasis supplied]



9. The Application under Order IX Rule 13 of the CPC filed by the Appellant, which is on record, sets out that the notice under Order XII Rule 8 of the CPC dated 20.05.2022 was only received by the Appellant on 23.05.2022. Given that the notice was sent on 20.05.2022, received on 23.05.2022 and the Impugned Judgment was passed on 24.05.2022, this really left no time for the Appellant or opportunity to the Appellant to appear before the learned Tribunal to produce these documents prior to passing of the Impugned Judgment.

10. The provisions of Order IX Rule 13 of the CPC set out that sufficient cause must be shown and it must be shown that a party seeking relief would act diligently and in a bonafide manner. It is apposite to set out the provisions of Order IX Rule 13 of the CPC are reproduced below:

“ORDER IX

Appearance of parties and consequence of non-appearance

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:

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xxx”

[Emphasis supplied]

11. Since the Application under Order IX Rule 13 of the CPC was filed by the Appellant before soon thereafter on 29.06.2022 given the ensuing summer vacations in the interregnum and it cannot be said that the Appellant was not diligent.

11.1 However, the learned Tribunal without examining this aspect or the



documents filed along with has held that sufficient cause has not been shown.

12. The Supreme Court in the case of *A. Murugesan v. Jamuna Rani*¹, affirmed its view taken previously in the case of *Srivastava v. R.K. Raizada and Ors.*², that under Order IX Rule 13 CPC, an *ex parte* decree can be set aside if the defendant proves either non-service of summons or "sufficient cause" for non-appearance. "Sufficient cause" must be liberally construed to enable justice between parties, particularly when no negligence or inaction is imputable to the defendant. Sufficient cause is an elastic expression, and courts have wide discretion to decide based on the case's peculiar facts and circumstances. The relevant extract is set out below:

"10. From a perusal of the order of the trial court, it is clear that the trial court has taken into consideration the past conduct of the appellant-defendant in the suit, instead of confining the consideration as to whether the appellant has shown sufficient cause or not for not appearing in the matter on 16-3-2009. It is fairly well settled that when an application is filed for setting aside ex parte decree under Order 9 Rule 13 CPC, the only aspect which is required to be considered is whether any sufficient cause is shown for absence in the matter when the matter was called. Without recording the specific finding, on the plea of the appellant that there was sufficient cause, the trial court has committed error in rejecting the application under Order 9 Rule 13 CPC. Even the appellate and the Revisional Court have not considered the matter in proper perspective and rejected the claim of the appellant. The judgment in G.P. Srivastava [G.P. Srivastava v. R.K. Raizada, (2000) 3 SCC 54] supports the case of the appellant. In the aforesaid judgment, the very issue had fallen for consideration before this Court. The relevant Para 7 reads as under: (SCC p. 57)

"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

¹ (2019) 20 SCC 803

² (2000) 3 SCC 54



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.”

[Emphasis Supplied]

13. Given the prevailing COVID-19 pandemic and the circumstances explained by the Appellant, this Court is unable to agree with these findings of the learned Tribunal. The order dated 15.07.2025 is accordingly set aside. Consequently, the matter is remanded to the learned Tribunal for a limited adjudication on whether the Appellant has breached the terms of the insurance policy and recovery rights ought to be granted to him.

14. For this purpose, the parties shall appear before the learned Tribunal on 16.09.2025.

15. The parties are at liberty to lead evidence in the matter in this behalf and only on the remit of the challenge *qua* breach of policy. It is clarified that the remand is limited to the aspect of recovery rights alone.



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15.1 Given the pendency of the matter for long, it is directed that neither party shall take unnecessary adjournments before the learned Tribunal.

16. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 12, 2025/ ha/pa