



2025:DHC:2515-DB



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

Date of decision: 09.04.2025

+ **RFA(OS) 40/2024 & CM APPL. 42153/2024**

ASHOK KUMAR SETH & ANR.Appellants

Through: Mr. SK Gupta & Mr. Puneet
Saini, Advs along with the
Appellant (in person)

versus

DR. SURAJ PRAKASH SETH & ORS.Respondents

Through: Respondent (in person)

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 21126/2025

1. This application has been filed by the appellants seeking condonation of delay of 20 days in filing the rejoinder to CM APPL. 42154/2024.

2. For the reasons stated in the application, the delay is condoned. The rejoinder is taken on record.

3. The application stands disposed of.

CM APPL. 42154/2024 (D-777 days in filing)

4. This application has been filed by the appellants seeking condonation of delay of 777 days in filing the present appeal, which is a challenge to the Judgement and Decree dated 18.02.2020 passed by the learned Single Judge of this Court in CS(OS) 46/2017, titled **Dr.**



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Suraj Prakash Seth & Ors. v. Dr. Ashok Kumar Seth & Ors.

5. In the said Suit, the appellants had been proceeded *ex parte vide* Order dated 13.12.2017.

6. The appellant no. 1, who appears in person, submits that the said judgement and decree were obtained by fraud inasmuch as he had not been staying at the Kalkaji address that was given in the plaint by the respondent nos. 1 to 4 herein, as he was posted at the Banaras Hindu University.

7. He further sought to make submissions on the merits of the appeal.

8. On the other hand, the respondent nos. 1 and 2, who also appear in person, oppose this application by contending that though the appellant no. 1 was posted at the Banaras Hindu University, he continued to reside at the address given in the plaint, that is, at the Kalkaji address. Along with the reply, they have placed on record certain documents in support of this plea.

9. We have considered the submissions made by the parties.

10. In the application itself, the appellants admit that they obtained knowledge of the pendency of the suit in question in November, 2019. They also applied for certified copies of the suit proceedings, which were made available on 11.03.2020. In the meantime, the impugned judgement had been passed by the learned Single Judge on 18.02.2020.

11. Thereafter, in the year 2024, only the appellant no. 2 filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (in short, 'CPC'), seeking aside of the *ex parte* decree passed



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against the appellants. The appellant no. 1, however, remained a bystander. No reason has been assigned for the appellant no. 1 not to have filed an application under Order IX Rule 13 CPC or having joined the Appellant no. 2, his wife, in the application filed by her.

12. The said application filed by the appellant no. 2 under Order IX Rule 13 of the CPC came to be dismissed by the learned Single Judge of this Court on 24.04.2024, finding the same to be barred by limitation.

13. It is only thereafter that the appellants filed the present appeal on or about 22.07.2024.

14. The appellant no. 1 has submitted that in between, there was the Covid-19 pandemic and that the said period needs to be excluded while determining the delay in filing of the present appeal.

15. While we are in agreement with the said submission of the appellant no. 1, and acknowledge that pursuant to the Order dated 08.03.2021 passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No. 3/2020*, titled ***In Re-Cognizance for Extension of Limitation***, the period of limitation between 15.03.2020 and 28.02.2022 has to be excluded in computing the period of limitation for any suit, appeal, application or proceeding, the same still fails to explain the delay in filing the present appeal from May, 2022 until the filing of the present appeal in July, 2024, as far as the appellant no. 1 is concerned, and also by the appellant no. 2, whose application under Order IX Rule 13 of the CPC has been dismissed by the learned Single Judge, specifically on the grounds of delay. We also note that the appellant no. 2 has not filed an appeal challenging the Order dated



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24.04.2024 dismissing her application under Order IX Rule 13 of the CPC, passed by the learned Single Judge of this Court.

16. Accordingly, we find that the present appeal is barred by limitation and that no sufficient cause has been shown by the appellants to condone this delay.

17. The application is accordingly, dismissed.

RFA(OS) 40/2024

18. In view of the above order, the appeal filed by the appellants stands dismissed as being barred by limitation.

19. The pending applications are disposed of as having been rendered infructuous.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 9, 2025/Pr/Kz/SJ

Click here to check corrigendum, if any