



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

% **Reserved on : 10th November 2025**
Pronounced on : 28th November 2025
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+ **RFA(COMM) 603/2025 & CM APPL. 67281/2025, CM APPL. 67282/2025**

DEVENDER KUMAR SHARMA

S/O LATE SH. CHAND RAM SHARMA
6/189, SECTOR-2, RAJENDER NAGAR,
SAHIBABAD, GHAZIABAD, U.P

.....Appellant

Through: Mr. S.P. Gairala and Mr. V.K. Sharma,
Advs.

versus

RAMESH ARORA

3404, GALI LALLU MISSAR
QUTAB ROAD, SADAR BAZAR
DELHI - 110006

.....Respondent

Through: Mr. Suresh Kumar Sharma and Mr.
Shubham Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the impugned judgment and decree dated 25th April 2024, passed by the *District Judge, Commercial Court, Tis Hazri Courts, Delhi* in **CS (COMM) No. 535/2023**, by which the suit filed by respondent [*original plaintiff*] was decreed for Rs. 7,48,850/- against the appellant [*original*



defendant] with simple interest @ 9 % per annum from 15th July 2022 till realization, along with costs.

2. Decree was passed by the Trial Court *ex parte*, decreeing the suit in favor of the respondent/plaintiff. Pursuant to which appellant/defendant filed an application under *Order IX Rule 13* of the Code of Civil Procedure, 1908 (*“CPC”*) on 03rd June 2025, for restoring the original suit and setting aside *ex parte* decree. *Vide* order dated 5th August 2025 [*Misc.DJ No.470/2025*], the application under *Order IX Rule 13 of CPC* was dismissed.

Factual Background

3. Respondent/plaintiff filed a suit for recovery of principal amount of Rs. 7,48,850/- along with interest of Rs. 2,17,152/- calculated at 12% per annum w.e.f. 16th October 2023 up to 15th March 2023 and legal notice charges at Rs. 6000/-, thus totaling to Rs. 9,72,000/-.

4. Respondent/plaintiff claimed to be dealing in ferrous and non-ferrous metals scrap and doing business under the name and style of “*M/s Nav Durga Metals*”, a sole proprietorship. During course of business, appellant/defendant approached respondent/plaintiff at Delhi and started purchasing aluminum scrap and had trade transactions with respondent/plaintiff for more than fifteen years.

5. Goods were sold to appellant/defendant on credit basis and a running account was maintained by respondent/plaintiff. As and when appellant/defendant purchased material, invoices were debited in the account and as and when the appellant/defendant made any payment, same were duly credited to the same account.



6. As per the accounts maintained by respondent/plaintiff, last payment made by appellant/defendant was a part payment of Rs. 1 lakh on 13th October 2020, leaving a balance outstanding of Rs. 7,48,850/- which appellant/defendant failed to pay to respondent/plaintiff despite repeated requests.

7. As per respondent/plaintiff, appellant/defendant put off payment of the outstanding balance despite demands and visits and being provided sufficient time and opportunity. A legal notice was served on 13th July 2022 which was duly 'served'. No reply was preferred by appellant/defendant.

8. Evidence filed by respondent/plaintiff included bills raised on appellant/defendant as **Ex. PW-1/1 to Ex. PW-1/4** and two e-way bills **Ex. PW1/5 Ex. PW1/6**. Statement of account was exhibited as **Ex. PW-1/7**, legal notice as **Ex. PW-1/8**, postal receipts as **Ex. PW-1/9**, internet generated tracking reports as **Ex. PW-1/10** and the certificate under Section 65B of the Indian Evidence Act, 1872 was exhibited as **Ex. PW-1/11**.

9. On 10th July 2023, summons were issued through all prescribed modes returnable for 5th October 2023. On 5th October 2023, it was noted by the Trial Court that summons served through ordinary process on *Jhilmil* address had been received back 'unserved' with the report stating that "***no such firm was on the given address***". Summons issued to appellant/defendant through speed post were also received back with the note that the "***Factory had been demolished, and no one resides here at present. Hence returned***".

10. As per order dated 05th October 2023, the Trial Court noted that the summons issued to the *Sahibabad* address, i.e., "*Plot no. 49, Gali No.4, Rajender Nagar, Industrial Area, Sahibabad, Ghaziabad (U.P)*", through



registered post, were received back as ‘*unserved*’. The service report dated 19th August 2023 recorded that “*the recipient could not be found*” and a subsequent service report dated 27th August 2023 also stated that “*despite repeated visits and intimations, the recipient is unwilling to accept. Hence returned.*” Accordingly, fresh summons were issued, returnable on 11th December 2023.

11. In order dated 11th December 2023, the Trial Court noted that summons issued *via* speed post and registered cover on “*Plot no. 49, Gali No.4, Rajender Nagar, Industrial Area, Sahibabad, Ghaziabad (U.P)*” was received back with the endorsement ‘*refused*’. The Trial Court perused the tracking report dated 25th October 2023, which noted that summons issued through speed post were delivered to the addressee but the envelope was received back ‘*unserved*’ with the report ‘*refusal*’. Similarly, summons issued to defendant through registered cover was also received back with the report ‘*refusal*’. Accordingly, the Trial Court considered that “*appropriate service had been done and appellant/defendant had ‘refused’ to accept the summons*”.

12. Furthermore, *vide* order dated 11th December 2023, the Trial Court issued directions for appellant/defendant to file a written statement and the matter was put for completion of pleadings on 15th February 2024.

13. In order dated 15th February 2024, it was noted by the Trial Court that no written statement was filed, and a last opportunity was given till 4th March 2024.

14. In order of 4th March 2024, it was noted that no one had appeared for appellant/defendant nor a written statement had been filed and the outer period of 120 days had expired. The right of appellant/defendant to file written statement was forfeited and appellant/defendant was proceeded *ex parte*.



15. Finally, the suit was decreed on 25th April 2024. Execution proceedings were initiated by the respondent/plaintiff before the Trial Court at *Karkardooma*, which is when, apparently, appellant/defendant stated that he came to know about the court proceedings on 16th May 2025.

16. On 20th May 2025, appellant/defendant stated that he applied for certified copy and inspected the file on 31st May 2025. This was stated in the application under *Order IX Rule 13* of CPC for setting aside the *ex parte* decree to restore the original suit.

17. Appellant/Defendant stated that summons was not ‘*served*’ and no one was residing at the factory and further it was not mentioned as to who had ‘*refused*’ the summons and, hence, could not be considered as proper service.

18. The delay in filing the application under *Order IX Rule 13* of CPC was of 43 days for which application of condonation of delay was filed under *Section 5* of the Limitation Act 1963 (“***Limitation Act***”).

19. Reply to the application was filed by respondent/plaintiff who stated that appellant/defendant had concealed material facts and the application had been filed only after the decretal amount had been withheld by the Executing Court in appellant’s/defendant’s bank account.

20. It was further alleged that *bona fide* reason was stated which prevented appellant/defendant from contesting the suit and the application had not been signed by the appellant/defendant. It was stated that all three addresses were duly mentioned in the suit and appellant/defendant did not bother to collect the envelope from postal authorities, despite giving information and ‘*refused*’ to receive the summons. The tracking report clearly showed ‘*service*’. It was



further stated that prior to filing the suit, legal notice and pre-litigation summons were also ‘served’ at the same addresses and stood duly ‘served’.

Analysis

21. Having considered the record and the submissions of the parties, the Court is not inclined to allow this appeal for *inter alia* reasons elaborated below.

22. Memo of parties in the plaint before the Trial Court had three addresses, of the appellant/defendant, which are extracted as under:

*“Shri Devender Kumar Sharma
Prop. M/s Tirupati Udyog
B-47, B(F), Jhilmil Industrial Area,
Delhi- 110092*

*Also Resident of:-
6/189, Sector-2, Rajender Nagar
Sahibabad, Ghaziabad, U.P.*

*Also C/O
Gopal Sheets
Plot no. 49, Gali No. 4
Rajender Nagar Industrial Area
Ghaziabad, UP”*

23. The record showed that summons were issued on 10th July 2023, through ordinary process, speed post, registered AD, through courier and permissible electronic mode, returnable for 5th October 2023.

24. On 5th October 2023, it was noted that summons issued through ordinary process on *Jhilmil address* were received back ‘unserved’ with the report that “no such firm is on given address”. Summons issued to defendant through



speed post were also received back with report that the “*factory had been demolished and no one is living at that address*”.

25. Summons issued to defendant on *Sahbibabad address* through registered post were received back ‘*unserved*’ with the report that “*addressee did not approach the postman for receiving the post despite intimation being given*”. Fresh summons were issued to the defendant on that date (5th October 2023) through all modes, returnable for 11th December 2023.

26. On 11th December 2023, it was recorded that summons issued to defendant on *Jhilmil address* by ordinary process were received back ‘*unserved*’ with the report that “*no such firm exist on the given address*”.

27. Summons issued to defendant at *Ghaziabad address* were not received back; however, dispatch through speed post and registered cover on the third address i.e. on “*Plot no. 49, Gali No.4, Rajender Nagar, Industrial Area, Sahibabad, Ghaziabad (U.P)*” were received back with the report ‘*refusal*’.

28. It was further noted from the tracking report that summons issued through speed post *vide* consignment no. **ED9262441856IN** showed that summons delivered to the addressee were returned with report of ‘*refusal*’. Same was the case of registered post consignment no. **RD867582905IN**. Accordingly, the Trial Court on the basis of refusal considered the summons as served.

29. This Court has perused the record in this regard, and notes that two tracking reports with respect to **ED9262441856IN** and **RD867582905IN** were both dispatched on 20th October 2023 from the District Courts, North Delhi,



and were delivered at the address on 25th October 2023, and thereafter, the item was ‘*refused*’, and was returned back to the sender.

30. This would, without any doubt, confirm that delivery was accomplished even though summons were ‘*refused*’.

31. There is yet another endorsement dated 19th August 2023 of ‘*refusal*’ to accept summons issued on 10th July 2023, at “Plot no. 49, Gali No.4, Rajender Nagar, Industrial Area, Sahibabad, Ghaziabad (U.P)”, noting “*प्राप्तकर्ता नहीं मिला*” (*recipient not met*), and yet another endorsement of 27th August 2023 stating “*बार-बार जाने पर व सूचना देने पर प्राप्तकर्ता लेना नहीं चाहता है वापस*” (*despite repeated visits and intimations, the recipient is unwilling to accept. Hence, returned*).

32. This places it beyond any pale of doubt that there was a categorical ‘*refusal*’ by defendant to accept the summons, and therefore, any plea that summons was not served and the *ex parte* order was not justified, is completely unmerited.

33. The three addresses on which summons were issued were the same on which legal notice had been addressed (**Ex. PW-1/8** of which postal receipts were appended as **Ex. PW-1/9** and internet generated track reports **Ex. PW-1/10**).

34. As regards legal notice, tracking reports with respect to speed post through consignment no. **ED139569881IN** was recorded as delivered on 15th July 2022, and registered post through consignment no. **RD779782708IN** was recorded as delivered on 14th July 2022. Despite the same, appellant/defendant did not file any response to the said legal notice.



35. Plea taken by appellant/defendant completely belies the record that not only legal notice was ‘served’ at the addresses in *Sahibabad*, but also the summons were delivered but ‘refused’ to be accepted, and therefore returned.

36. In these circumstances the Trial Court’s decision /opinion that summons would be considered as ‘served’ rejecting the application under *Order IX Rule 13 CPC* cannot be faulted.

37. In *Order IX Rule 13* application, it may be noted that defendant also stated that “*defendant was unaware about court proceedings as he was never served summons at his proper address. The plaintiff has misled the Hon’ble Court by giving false address of defendant.*”

38. This statement is also completely falsified by the fact that legal notices at same addresses were ‘served’ and summons were also delivered but ‘refused’.

39. In fact, in the affidavit in support of appeal, appellant/defendant has given his address as resident of *Sahibabad* as also in the application filed under *Order IX Rule 13 CPC*.

40. In this regard, concerning the issue of service, the following legal principles merit consideration. Reference may be made to ***Parimal v. Veena***, (2011) 3 SCC 545, wherein the Court observed that there exists a rebuttable presumption of due service when notice is sent by registered post and clarified the corresponding burden of proof. Relevant paragraphs are extracted below:

“Presumption of service by registered post and burden of proof

17. This Court after considering a large number of its earlier judgments in Greater Mohali Area Development Authority v. Manju Jain [(2010) 9 SCC 157 : (2010) 3



SCC (Civ) 639 : AIR 2010 SC 3817] held that in view of the provisions of Section 114 Illustration (f) of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897 there is a presumption that the addressee has received the letter sent by registered post. However, the presumption is rebuttable on a consideration of evidence of impeccable character. A similar view has been reiterated by this Court in Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra [(2010) 13 SCC 657 : JT (2010) 12 SC 287] .

18. In Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10 ATC 396 : AIR 1989 SC 1433] this Court held as under : (SCC pp. 611-12, para 8)

“8. There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service.”

19. The provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of Section 103 amplifies the general rule of



Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue.”

(emphasis supplied)

41. Reliance can also be placed in the case of ***Vishwabandhu v. Sri Krishna***, (2021) 19 SCC 549, relevant paragraphs are extracted as under:

“15. The summons issued by registered post were received back with postal endorsement of refusal, as would be clear from the order dated 19-2-1997. Sub-rule (5) of Order 5 Rule 9 of the Code states inter alia that if the defendant or his agent had refused to take delivery of the postal article containing the summons, the court issuing the summons shall declare that the summons had been duly served on the defendant. The order dated 19-2-1997 was thus completely in conformity with the legal requirements. In a slightly different context, while considering the effect of Section 27 of the General Clauses Act, 1897, a Bench of three Judges of this Court in C.C. Alavi Haji v. Palapetty Muhammed [C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555 : (2007) 3 SCC (Cri) 236] made the following observations : (SCC p. 564, para 14)

“14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a



postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. (Vide Jagdish Singh v. Natthu Singh [Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647] ; State of M.P. v. Hiralal [State of M.P. v. Hiralal, (1996) 7 SCC 523] and V. Raja Kumari v. P. Subbarama Naidu [V. Raja Kumari v. P. Subbarama Naidu, (2004) 8 SCC 774 : 2005 SCC (Cri) 393] .)’”

(emphasis supplied)

42. In view of the principles crystallized in the above decisions, this Court finds no basis to accept appellant’s contention that service was ‘*not duly effected*’. The record clearly demonstrates that the summons sent to the appellant’s admitted addresses were either returned with endorsements that the addressee did not respond to the postal intimation; or specifically marked as ‘*refused*’.

43. In light of *Parimal v. Veena* (*supra*) and *Vishwabandhu v. Sri Krishna* (*supra*), such endorsements give rise to a statutory presumption of due service under *Section 27* of the General Clauses Act, 1897, which the appellant has failed to rebut by any credible material. Appellant has neither disputed the correctness of the addresses nor produced any evidence of impeccable character to displace the presumption. Consequently, the Trial Court was justified in treating service as duly effected and in proceeding *ex parte* when appellant failed to appear or file a written statement within the prescribed time.

44. In view of the above, the Court does not find any reason to allow this appeal and be benevolent to what is a delinquent party.



45. Moreover, the application filed in June 2021 was highly belated and also did not state any grounds for condonation of delay which would amount to “*sufficient cause*” under *Section 5* of the Limitation Act.

46. The application under *Section 5* of the Limitation Act stated that the knowledge of the said decree through the Executing Court was on 16th May 2025, a certified copy was applied on 20th May 2025, and an inspection was made on 31st May 2025. The application was moved in June 2025 and a delay of 43 days was sought to be condoned. This also had not on favor with the Trial Court, which this Court does not intend to displace.

47. In any event, with respect to the settled legal position under *Order IX Rule 13* of the CPC governing setting aside of *ex parte* decrees, particularly in circumstances such as the present case, reliance may again be placed on the judgment in *Parimal v. Veena*, (*supra*), wherein the Court held as follows:

“12. It is evident from the above that an ex parte decree against a defendant has to be set aside if the party satisfies the court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court. The legislature in its wisdom, made the second proviso mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.

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. [AIR 1962 SC 361] , Lonand Grampanchayat v. Ramgiri Gosavi [AIR 1968 SC 222] , Surinder Singh Sibia v. Vijay Kumar Sood [(1992) 1 SCC 70 : AIR 1992 SC 1540] and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [(2010) 5 SCC 459 : (2010) 2 SCC (L&S) 50 : (2010) 2 SCC (Cri) 1291: (2010) 2 SCC (Civ) 448])

14. In Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] 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 v. Kanshi Ram [(1916-17) 44 IA 218: AIR 1917 PC 156], Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] and Mata Din v. A. Narayanan [(1969) 2 SCC 770: AIR 1970 SC 1953].)

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 [(2000) 9 SCC 94 : 2000 SCC (L&S) 845 : AIR 2000 SC 2306] , Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] , Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. [(2002) 3 SCC 156 : AIR 2002 SC 451] , Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] , Kaushalya Devi v. Prem Chand [(2005) 10 SCC 127] , Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd. [(2005) 13 SCC 95] and Reena Sadh v. Anjana Enterprises [(2008) 12 SCC 589 : AIR 2008 SC 2054] .)

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 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.”

(emphasis supplied)

48. Applying the principles laid down in ***Parimal v. Veena*** (*supra*) to the facts of the present case, this Court finds that appellant has failed to satisfy either of the two statutory requirements under *Order IX Rule 13 CPC*.

49. *Firstly*, as already discussed, service was ‘*duly effected*’, and the repeated postal endorsements were either of ‘*refused*’ or addressee did not approach despite information, which give rise to a presumption of due service



under *Section 27* of the General Clauses Act, 1897. Consistent with *Parimal v. Veena (supra)*, such a presumption can be rebutted only by evidence of impeccable character, which appellant has not furnished.

50. *Secondly*, the Apex Court in *Parimal v. Veena (supra)* has categorically held that “*sufficient cause*” cannot be established where the conduct of the defendant reflects negligence, want of *bona fides*, or inactivity. In the present case, appellant’s conduct squarely falls within this prohibited category; despite multiple attempts at service, appellant neither responded to the postal intimation nor took steps to inquire into the proceedings and approached the Court only after execution was initiated. This pattern of conduct reflects clear lack of due diligence. Therefore, even on the standards articulated by the Supreme Court, no ‘*sufficient cause*’ has been demonstrated, and the refusal of the Trial Court to set aside the *ex parte* decree warrants no interference.

51. In view of the above, the appeal stands dismissed.

52. Pending applications are rendered infructuous.

53. Judgement be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

NOVEMBER 28, 2025/RK/zb/tk