



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:26.05.2025

+ **C.R.P. 66/2025, CM APPL. 12141/2025, CM APPL. 12142/2025, CM APPL. 12143/2025 & CM APPL. 12140/2025**

PRADEEP KALRA

..... Petitioner

versus

VIJAY BANSAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Prashant Sharma, Adv. (through VC)

For the Respondent :

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CM APPL. 12141/2025 & CM APPL. 12142/2025 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM APPL. 12143/2025 (for condonation of delay)

3. For the reasons mentioned in the application, the same is allowed and the delay of 66 days in filing the present petition is



condoned.

4. The application stands disposed of.

C.R.P. 66/2025 & CM APPL. 12140/2025 (for stay)

5. The present petition is filed challenging the order dated 08.08.2024 (hereafter '**impugned order**'), passed by the learned District Judge, in Mis. DJ No. 1262 of 2023 titled as *Vijay Bansal v. Pradeep Kalra*, dismissing the application filed by the petitioner under Order XXXVII Rule 4 read with Order IX Rule 13 of the Code of Civil Procedure, 1908 ('**CPC**').

6. The brief facts of the case are as follows:

6.1. The suit was filed by the respondent under Order XXXVII of the CPC for recovery of ₹4,93,344/- along with *pendent lite* and future interest at the rate of 18% per annum. It was claimed by the respondent/ plaintiff that the petitioner/ defendant had approached him for purchasing iron sheets, etc. and made part payments against the supply of the goods. It was found that a sum of ₹4,55,042/- was outstanding against the petitioner, whereby the petitioner gave the subject cheque dated 28.01.2019 for ₹4,50,000/- to the respondent. The subject cheque was dishonoured and returned with the remark- '*Funds Insufficient*', pursuant to which, the petitioner requested the respondent to encash the cheque in the end of April, 2019. It was claimed that the respondent again presented the cheque for encashment and the same was returned with the remark- '*Payment Stopped by Drawer*'. Despite repeated requests, the petitioner did not



clear the dues, which led to filing of the suit, being, CS No. 640/2019. The plaint was supported by copies of invoices raised by the respondent against the petitioner. The respondent had also annexed the ledger account in respect of the petitioner.

6.2. Summons were issued to the petitioner in the suit and the petitioner also filed an application seeking leave to defend. The last appearance on behalf of the petitioner was recorded on 18.02.2021, whereafter none appeared on his behalf.

6.3. Pursuant to the same, the judgment and decree dated 24.01.2023 was passed whereby the suit was decreed in favour of the respondent and the petitioner's application for leave to defend was dismissed. In the judgment dated 24.01.2023, the learned Trial Court took note of the defence as sought to be raised in the application for leave to defend. It was noted that while the petitioner had alleged that the subject cheque had been misused and he had made all the payments for the goods supplied by the respondent, however, the averments in relation to misuse of cheque were vague and it was not explained as to how the cheque came to be in the possession of the respondent. It was also noted that the petitioner had not come forward to argue the application for leave to defend and nothing had been placed on record to show if the petitioner had ever made any complaint regarding misuse of cheque.

6.4. The subject application under Order XXXVII Rule 4 of the CPC read with Order IX Rule 13 of the CPC was thereafter filed for setting aside the judgment and decree dated 24.01.2023, in which, the



petitioner again agitated the grounds as raised in his application seeking leave to defend. Further arguments were taken by the petitioner that the dispute was of a commercial nature, as provided under the Commercial Courts Act, 2015, and should not have been decided by the Civil Court.

6.5. The learned District Judge dismissed the application by the impugned order. It was observed that the defence presented by the petitioner in his application seeking leave to defend had been duly considered and the petitioner had not shown as to what steps he took to diligently pursue his defence in the suit. The learned District Judge also rejected the contention that the dispute between the parties was commercial in nature.

6.6. Aggrieved by the same, the petitioner has preferred the present petition.

7. The learned counsel for the petitioner submitted that the learned District Judge had passed the impugned order in an arbitrary manner, without appreciating the facts of the case.

8. He submitted that the counsel who had been engaged by the petitioner previously for representing him in the suit proceedings had remained absent, despite receiving the fees. He submitted that the petitioner was reliant on his counsel as he was residing at a distant place and was confined to bed due to some health issues. He submitted that the petitioner had apprised his previous counsel of the facts of the case and was under the *bona fide* belief that his interests were being taken care of in the case. He stated that the petitioner only found out



about the judgment in the suit during cross examination in the proceedings initiated by the respondent under Negotiable Instruments Act, 1881.

9. He submitted that the respondent had filed the suit on the basis of false invoices and he had misused the subject cheque. He submitted that the respondent plaintiff has filed false statement of account and deliberately concealed the fact of total received amount from the petitioner.

10. He submitted that the respondent had claimed that the subject cheque had been issued in respect of alleged liability of the petitioner against the respondent's invoices, and therefore, the dispute between the parties was commercial in nature.

11. He submitted that the statement of account of the respondent's firm was filed with the plaint which also makes it evident that the matter pertains to a commercial dispute, within the meaning under Commercial Courts Act, 2015.

12. He submitted that the petitioner has a good case on merits and a solid defence in relation to the misutilization of subject security cheque, false/incomplete statement of accounts and false ledger account, etc. which merit grant of leave to defend.

13. He submitted that the grounds in the application for leave to defend could not be properly argued before the learned District Judge due to the absence of the petitioner's previous counsel and the petitioner cannot be made to suffer due to the same.



ANALYSIS

14. In the present petition, the petitioner has impugned the dismissal of his application under Order XXXVII Rule 4 of the CPC whereby he had sought setting aside of the judgment and decree dated 24.01.2023 and prayed for an opportunity to address arguments on application seeking leave to defend.

15. Before delving into the facts of the case, it is necessary to succinctly discuss the law in relation to Rule 4 of Order XXXVII of the CPC. The said provision reads as under:

“4. Power to set aside decree.—After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.”

16. The Hon’ble Apex Court, in the case of **Rajni Kumar v. Suresh Kumar Malhotra : (2003) 5 SCC 315**, had discussed the scope of Rule 4 of Order XXXVII of the CPC. The Hon’ble Apex Court had also discussed as to how Rule 4 of Order XXXVII of the CPC is different from Rule 13 of Order IX of the CPC, which provides for setting aside of *ex parte* judgment against defendant in suits instituted in the ordinary manner. The relevant portion reads as under:

“8. A careful reading of Rule 4 shows that it empowers, under special circumstances, the court which passed an ex parte decree under Order 37 to set aside the decree and grant one or both of the following reliefs, if it seems reasonable to the court so to do and on such terms as the court thinks fit:

(i) to stay or set aside execution, and



(ii) to give leave to the defendant (a) to appear to the summons, and (b) to defend the suit.

9. The expression “special circumstances” is not defined in the Civil Procedure Code nor is it capable of any precise definition by the court because problems of human beings are so varied and complex. In its ordinary dictionary meaning it connotes something exceptional in character, extraordinary, significant, uncommon. It is an antonym of common, ordinary and general. It is neither practicable nor advisable to enumerate such circumstances. Non-service of summons will undoubtedly be a special circumstance. In an application under Order 37 Rule 4, the court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so unusual or extraordinary as to justify putting the clock back by setting aside the decree; to grant further relief in regard to post-decree matters, namely, staying or setting aside the execution and also in regard to pre-decree matters viz. to give leave to the defendant to appear to the summons and to defend the suit.

10. In considering an application to set aside ex parte decree, it is necessary to bear in mind the distinction between suits instituted in the ordinary manner and suits filed under Order 37 CPC. Rule 7 of Order 37 says that except as provided thereunder the procedure in suits under Order 37 shall be the same as the procedure in suits instituted in the ordinary manner. Rule 4 of Order 37 specifically provides for setting aside decree, therefore, provisions of Rule 13 of Order 9 will not apply to a suit filed under Order 37. In a suit filed in the ordinary manner a defendant has the right to contest the suit as a matter of course. Nonetheless, he may be declared ex parte if he does not appear in response to summons, or after entering appearance before framing issues; or during or after trial. Though addressing arguments is part of trial, one can loosely say that a defendant who remains absent at the stage of argument, is declared ex parte after the trial. In an application under Order 9 Rule 11, if a defendant is set ex parte and that order is set aside, he would be entitled to participate in the proceedings from the stage he was set ex parte. But an application under Order 9 Rule 13 could be filed on any of the grounds mentioned thereunder only after a decree is passed ex parte against the defendant. If the court is satisfied that (1) summons was not duly served, or (2) he was prevented by sufficient cause from appearing when the suit was called for hearing, it has to make an order setting aside the decree



against him on such terms as to cost or payment into court or otherwise as it thinks fit and thereafter on the day fixed for hearing by court, the suit would proceed as if no ex parte decree had been passed. **But in a suit under Order 37, the procedure for appearance of the defendant is governed by provisions of Rule 3 thereof. A defendant is not entitled to defend the suit unless he enters appearance within ten days of service of summons either in person or by a pleader and files in court an address for service of notices on him. In default of his entering an appearance, the plaintiff becomes entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate specified, if any, up to the date of the decree together with costs. The plaintiff will also be entitled to judgment in terms of sub-rule (6) of Rule 3. If the defendant enters an appearance, the plaintiff is required to serve on the defendant a summons for judgment in the prescribed form. Within ten days from the service of such summons for judgment, the defendant may seek leave of the court to defend the suit, which will be granted on disclosing such facts as may be deemed sufficient to entitle him to defend and such leave may be granted to him either unconditionally or on such terms as the court may deem fit.** Normally the court will not refuse leave unless the court is satisfied that facts disclosed by the defendant do not indicate substantial defence or that defence intended to be put up is frivolous or vexatious. Where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, no leave to defend the suit can be granted unless the admitted amount is deposited by him in court. Inasmuch as Order 37 does not speak of the procedure when leave to defend the suit is granted, the procedure applicable to suits instituted in the ordinary manner, will apply.

11. It is important to note here that the power under Rule 4 of Order 37 is not confined to setting aside the ex parte decree, it extends to staying or setting aside the execution and giving leave to appear to the summons and to defend the suit. We may point out that as the very purpose of Order 37 is to ensure an expeditious hearing and disposal of the suit filed thereunder, Rule 4 empowers the court to grant leave to the defendant to appear to summons and defend the suit if the court considers it reasonable so to do, on such terms as the court thinks fit in addition to setting aside the decree. Where on an application, more than one among the specified reliefs may be granted by the court, all such reliefs must be claimed in one application. It is not



permissible to claim such reliefs in successive petitions as it would be contrary to the letter and spirit of the provision. That is why where an application under Rule 4 of Order 37 is filed to set aside a decree either because the defendant did not appear in response to summons and limitation expired, or having appeared, did not apply for leave to defend the suit in the prescribed period, the court is empowered to grant leave to the defendant to appear to the summons and to defend the suit in the same application. It is, therefore, not enough for the defendant to show special circumstances which prevented him from appearing or applying for leave to defend, he has also to show by affidavit or otherwise, facts which would entitle him leave to defend the suit. In this respect, Rule 4 of Order 37 is different from Rule 13 of Order 9.”

(emphasis supplied)

17. From the aforesaid, it is clear that under Rule 4 of Order XXXVII of the CPC, after the decree is passed, the Court can only set aside the decree, or give leave to the defendant to defend the suit, if special circumstances exist and the Court deems it reasonable to do so. In the case of ***Tirlok Singh Thakur v. Madan Singh Nirala: 1999 SCC OnLine HP 41***, the Hon’ble High Court of Himachal Pradesh had observed as under:

*“11. The words “special circumstances” occurring in Rule 4 of Order 37 and the words “sufficient ground” appearing in Order 9, Rule 13 are not synonymous and as such cannot be equated. The legislature in its wisdom has used the words “special circumstances” in Rule 4, of Order 37. **Therefore, the gravity of reasons is higher in the case of “special circumstances”.** Under Rule 4, the defendant is obliged to explain the special circumstances which prevented him from appearing in Court and seek leave to defend the suit within time. In addition he has further to show that he has good, substantial and/or meritorious defence in the suit.”*

(emphasis supplied)

18. Thus, to succeed in its application under Rule 4 of Order



XXXVII of the CPC, it is imperative for the defendant to explain the special circumstances for their non-appearance, and to also establish a substantial case on merits which may entitle them to grant of leave to defend.

19. While “special circumstances” have not been defined anywhere in the CPC, numerous Courts have endeavored to elaborate upon what constitutes as such. It has been held in a number of judgments, including ***Tirlok Singh Thakur v. Madan Singh Nirala*** (*supra*) that the threshold of “special circumstances” is higher than that of “sufficient cause”, as provided under Rule 13 of Order IX of the CPC and Section 5 of the Limitation Act, 1963.

20. The Hon’ble High Court of Andhra Pradesh, in the case of ***Karumilli Bharathi v. Prichikala Venkatachalam***: 1999 SCC OnLine AP 168, had discussed a number of judgments and observed that the cause which leads to “special circumstances” is more strict and is to be one which shows that the defendant had no possibility of appearing before Court. The relevant portion of the judgment is as under:

“6. The Courts in India have clearly distinguished the two phrases, and they have held that ‘special circumstance’ found under Order 37, Rule 4, CPC is not synonymous with the ‘sufficient cause’ found under Order 9, Rule 13, CPC or under Section 5 of the Limitation Act. For instance, in the decision reported in Mohan Lal v. Om Prakash, AIR 1989 Raj 132, the High Court of Rajasthan, distinguished ‘sufficient cause’ from ‘special reason’. It held that the case set up by the defendant for setting aside the ex parte decree, that the plaintiff assured that there would be settlement, therefore, he did not appear on the day fixed, could constitute ‘sufficient cause’ in terms of Order 9, Rule



13, CPC, but not ‘special reason’, as envisaged under Order 37, Rule 4, CPC. In another judgment reported in **Rahini Roy v. Jethmull Bhoiraj, AIR 1969 Cal 218**, the High Court of Calcutta held that defendants in the case did not make out ‘special circumstances’. The facts of that case reveal that the defendants did not furnish security to the extent of Rs. 30,000/- to the satisfaction of Registrar within one month, nor even after giving two time extensions and as such ultimately an ex parte decree was passed on 8-9-1967, when the matter appeared in pre-emptory list. The Court held that the defendants therein did not explain their absence and their inaction when they had equal, opportunity, ultimately held that the defendants did not make out ‘special circumstances’ for setting aside the ex parte decree. The High Court of Jammu and Kashmir in the decision reported in **Subash Raina v. Suraj Parkash, AIR 1977 J and K 30**, also had an occasion to consider the distinction between “special circumstances” and “sufficient cause”. It held that the defendant did not make out ‘special circumstances’ in his plea that he was busy at Phillaur and was undergoing training and as such he could not be present on the day when he was required to seek leave to defend the suit within time, by observing as under:—

‘7. Coming to the question of special circumstances as envisaged by Rule 4 it is noticed that **no special circumstances can be said to be established from the averments made in the application itself**. There is difference between “special circumstance” occurring in Rule 4 and “sufficient cause” occurring in Rule 14 of Order 9. ‘Special Circumstance’ is not synonymous with ‘sufficient cause’. **Under Rule 4 the defendant has to explain the special circumstance which prevented him from appearing in the Court and seek leave to defend the suit within time. In the instant case no special circumstance entitling the defendant to claim benefit under Order 4 has been set up.** The mere fact that the defendant-petitioner was busy at Phillaur and was undergoing training there, would not have prevented him from engaging an attorney or a lawyer and instructing him to appear on his behalf and seek leave to defend the suit, or at any rate Phillaur being not a far off place from Jammu, he could have boarded the train during night and come over to Jammu on a holiday and after briefing his counsel should have returned to that place. The defendant willfully remained absent and in spite of service did not



either personally or through agent or through a lawyer care to make his appearance and seek leave to defend the suit.

8. For the foregoing reasons, I am, therefore, not inclined to accede to the request of the defendant that the decree be set aside against him.'

From the above judgments, I find that the High Courts in India have attempted to distinguish the phrases "special circumstances" found under Order 37, Rule 4 and "sufficient cause" found under Order 9, Rule 13, CPC. I am not able to lay my hands on any judgment, nor any such judgment has been brought to my notice, as to the exact distinction between these two phrases. **However, from the judgments noted above, it is certain that the reasons offered to explain the special circumstances, should be such that a person absolutely had no possibility of appearing before the Court on a relevant day.** For instance, there was a strike and all the buses were withdrawn and there was no other mode of transport, so as to go from the place he resides to the place where the Court is situated, may constitute "special circumstances". But if he were to plead that the bus he wanted to board, he missed it and as such he could not appear before the Court, may constitute "sufficient cause", but not a 'special circumstance', since it is not his case that there was no other mode of transport, enabling him to reach the Court on the date he was required to be present in the Court. Thus a 'special circumstance' would take with it a 'cause' or 'reasons', which prevents a person in such a way that it is almost impossible for him to attend the Court or to perform certain acts which he is required to do. **Thus the 'reason' or 'cause' found in "special circumstances" is more strict or more stringent than in "sufficient cause".** What would constitute 'special circumstances', would depend upon the facts of each case. **Making out of special circumstances (for the purpose of setting aside the ex parte decree) may constitute a 'sufficient cause', but not vice versa.** This inference I am drawing from the way 'special circumstance' has been interpreted by the different High Courts in India. Therefore, what has to be seen for setting aside an ex parte decree, under Order 37, Rule 4, CPC, is whether the defendant has made out "special circumstance" for his non-appearance on the day when he was required to appear before the Court, either to seek the leave to defend the suit or to comply with the directions of the Court."

(emphasis supplied)



21. In the peculiar facts of the present case, the summons were duly served upon the petitioner, who entered his appearance and even filed an application seeking leave to defend. The learned District Judge, in the impugned order, took note of the petitioner's explanation for non-appearance and expressed doubt on the reasons so mentioned. The relevant portion of the impugned order in this regard is as under:

“It is the defendant's case that his earlier counsel was negligent in the matter and his last appearance was on 18.02.2021 and that thereafter the counsel was negligent and did not appear in the matter and also did not appear for arguments on the application for leave to defend. I find that although the defendant has put the blame on the earlier counsel, the defendant has not clearly stated as to what diligence was undertaken by the defendant himself in pursuing his defence in the suit. Although the defendant has vaguely stated that due to certain health issues and since he was bedridden due to accident he could not properly pursue the case, however, no details in this regard have been given. The defendant has also not mentioned as to whether he had taken any action against his earlier counsel for the alleged negligence.”

(emphasis supplied)

22. The learned District Judge has rightly noted that the petitioner has merely given vague reasons of attenuating health issues and pushed the entire blame for non-appearance on his previous counsel. It is pertinent to note that the suit was decreed after more than 2 years of non-appearance of the petitioner. It is unfathomable that the petitioner was entirely reliant upon his previous counsel and did not take care to follow up with the counsel for updates in relation to the case. Merely engaging a counsel and paying some amount in advance does not absolve a litigant of their duty to diligently pursue their interests in a litigation. While the entire onus for non-appearance has been sought to



be shifted on to the previous counsel, however, admittedly, no action was taken by the petitioner against his previous counsel either. As noted by the learned District Judge, the contention in relation to alleged health ailments are also vague.

23. It is pertinent to take note of the decision of the Hon'ble Apex Court in the case of Nitin ***Mahadeo Jawale v. Bhaskar Mahadeo Mutke***: 2024 SCC OnLine SC 3468. In the said case, while upholding the dismissal of an order condoning delay of four years, the Hon'ble Apex Court had noted the growing tendency of litigants to shift all the blame on their prior counsel. It was noted that even if it is to be considered that the concerned lawyer was negligent, the same by itself is not a ground to condone delay as the litigant ought to be vigilant about the judicial proceedings. The relevant portion of the decision is as under:

“4. It appears from the materials on record that as the defendants failed to file their written statement in time the stage to file written statement was closed. Thereafter permission of the Trial Court was prayed for to file the written statement after a period of over 4½ years. The Trial Court permitted the defendants to file their written statement. The plaintiff being dissatisfied with the same challenged the order passed by the Trial Court permitting the defendants to file written statement after a period of 4½ years. The High Court allowed the petition and set aside the order passed by the trial court.

5. We find no error not to speak of any error of law in the impugned judgment passed by the High Court.

6. We have noticed over a period of time the growing tendency on the part of the litigants in throwing the entire blame on the head of the advocate. Not only this, we have come across cases where the concerned advocate has filed an affidavit in favour of his client(s) saying that he was unable to attend the proceedings due to



some personal reasons difficulties thereby facilitating the litigant to get the delay condoned.

7. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.

8. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

(emphasis supplied)

24. As noted above, the gravity of “sufficient cause” is lower than that of “special circumstances”. When the argument of negligence of the previous counsel is not sufficient to constitute sufficient cause for condonation of delay, it can certainly not constitute “special circumstances” as required for interference under Rule 4 of Order XXXVII of the CPC.

25. In view of the above, in the opinion of this Court, the petitioner has abysmally failed to make out a case of special circumstances to explain his non-appearance. No such contentions are spelt out in the application under Rule 4 of Order XXXVII of the CPC so as to warrant setting aside of the judgment and decree dated 24.01.2023 and accede to the petitioner’s request for grant of leave to defend. After entering appearance and filing the application seeking leave to defend, the petitioner failed to be vigilant and take appropriate steps to pursue the application for close to two years.

26. In such circumstances, having found that no special



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circumstances have been made out so as to warrant interference, this Court finds no reason to interfere with the impugned order.

27. The present petition is dismissed in the aforesaid terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

MAY 26, 2025