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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO 298/2023, CM APPL. 59235/2023, CM APPL. 22429/2024 and
CM APPL. 34607/2025
ABHISHEK OBEROIAppellant

Through:Mr.K.K. Sharma, Sr. Advocate with
Mr.Rajiv Bakshi and Mr.Ram Pravesh Rai,
Advocates

versus

BONNY CHOPRA AND ORS.Respondents
Through:Ms. Gita Dhingra, Advocate for
respondent No.1

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **30.04.2026**

1. By way of the present appeal, the appellant, who was the defendant before the Trial Court, seeks to assail the order dated 23.09.2023, whereby the defendant's application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter "CPC") came to be dismissed by the learned ADJ-08, Central District, Tis Hazari Courts, Delhi in MISC DJ 122/2022.
2. Briefly stated, the present appeal arises out of an *ex-parte* judgment and decree dated 15.03.2021 passed by the Trial Court in a suit for recovery of Rs.13,75,000/- alongwith interest, wherein the defendant was proceeded *ex-parte* on 16.05.2017. The defendant subsequently filed an application under Order IX Rule 13 CPC read with Section 5 of the Limitation Act.
3. Learned counsel for the defendant submits that the defendant was never duly served with summons in the proceedings and had no knowledge of the pendency of the case, as the summons were allegedly received by respondent no. 2 at an address where the defendant was no longer residing



and with whom he was not on speaking terms. It is further submitted that despite the absence of valid service, the defendant was proceeded *ex-parte* on 16.05.2017 and the suit was decreed *ex-parte* on 15.03.2021. The defendant claims to have first become aware of the decree in the third week of January 2022 through an online search, whereafter he promptly filed the application under Order IX Rule 13 CPC on 26.02.2022. It is further submitted that the non-appearance was neither deliberate nor intentional, but due to lack of knowledge.

4. Learned counsel for the respondents submits that the defendant was duly served and had knowledge of the proceedings, as he had already appeared through counsel before the Trial Court. It is contended that despite opportunities, the defendant failed to appear, leading to *ex-parte* proceedings on 16.05.2017 and an *ex-parte* decree dated 15.03.2021. It is further contended that no sufficient cause for non-appearance or delay was shown, and the allegations regarding improper service and unauthorized appearance of counsel are afterthoughts raised only to delay execution of the decree.

5. I have heard the learned counsels for the parties and perused the record.

6. A perusal of the record reflects that the suit, out of which the present proceedings arise, was filed by the respondent/plaintiff for recovery of an amount of Rs.13,75,000/- along with interest. The defendants initially entered appearance and filed a written statement disputing the claim, however, the suit was later adjourned *sine die* and subsequently revived. Thereafter, in the absence of appearance on behalf of the defendants, the Trial Court proceeded *ex-parte* and ultimately passed an *ex-parte* Judgment and decree dated 15.03.2021 in favour of the plaintiff for recovery of the suit



amount along with interest and costs.

7. It is further noted that the delay in filing the application under Order IX Rule 13 CPC stands explained. The defendant has consistently stated that he became aware of the *ex-parte* Judgment and decree only in the third week of January 2022, whereafter he applied for certified copies and filed the application on 26.02.2022.

8. Further, the defendant has explained his non-appearance on the ground that no proper or valid service of summons was effected upon him in the revival proceedings, and that he consequently had no knowledge of the pendency of the matter after the suit was restored. In support of this contention, the defendant refers to the record to assert that the summons was neither served upon him personally nor at his correct address, as he was no longer residing there.

9. The legal position governing applications under Order IX Rule 13 CPC is well settled. This Court, in Hira Sweets & Confectionary Pvt. Ltd. v. Hira Confectioners¹ held:-

“11. Insofar as the scope of an application under Order IX Rule 13 CPC is concerned, 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. In the present case, the defendant was duly served with the summons in the suit and had appeared.

12. “Sufficient Cause” is an elastic expression and no hard and fast guidelines are prescribed. The Court, in its discretion, has to consider the “sufficient cause” in the facts and circumstances of every individual case. Although in interpreting the words “sufficient cause”, the Court has wide discretion but the same has to be exercised in the particular facts of the case.”

¹ (2021) 2 HCC (Del) 134



10. In the case of Parimal v. Veena², 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 Ramial 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] and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [(2010) 5 SCC 459].)

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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 [(2000) 9 SCC 94], Madanlal v. Shyamlal [(2002) 1 SCC 535], Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. [(2002) 3 SCC 156], Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195], 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. Aniana Enterprises [(2008) 12 SCC 589].)

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.”

² (2011) 3 SCC 545



11. Similarly, the Supreme Court recently in A. Murugesan v. Jamuna Rani³ affirmed its earlier view in G.P. Srivastava v. R.K. Raizada⁴, which is reproduced as under:

“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 pte 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.”

12. In the present case, documentary evidence of the change of address, including an *Aadhaar* card and utility records, was placed on record before the Trial Court, to show that the defendant was not residing at the address where summons was served. It is further evident from the record that an appearance was entered only by way of a memorandum of appearance, and no *Vakalatnama* is found on record. Moreover, the non-appearance is post

³ (2019) 20 SCC 803

⁴ (2000) 3 SCC 54



revival of the suit after it adjourned *sine die* earlier.

13. Tested on the anvil of the aforesaid principles and in view of the facts and circumstances of the present case, this Court is satisfied that the defendant has shown sufficient cause for his non-appearance before the Trial Court. Consequently, the appeal is allowed and the order dated 23.09.2023 is set aside, subject to payment of costs of Rs.25,000/- by the defendant to the plaintiffs. The *ex-parte* judgment and decree stand set aside, and the suit is restored to its original position. The parties are directed to appear before the concerned Trial Court on 20.05.2026.

14. Learned counsel for the defendant further submits that the amount deposited before the Executing Court be released to the defendant. Considering that the impugned *ex-parte* order has been set aside, let the Executing Court release the deposited amount along with interest accrued thereon to the defendant.

15. Accordingly, the present appeal is disposed of alongwith the pending applications.

MANOJ KUMAR OHRI, J

APRIL 30, 2026

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