



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 435/2015 & CM APPL. 32318/2015**
ASHOK GUPTA & SONS HUFAppellant
Through: Mr. Atul Sahi and Ms. Shabnam
khan, Advocates

versus

ELUX RETAIL PVT LTDRespondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

07.05.2026

%

1. By way of the present appeal, the appellant, being the defendant before the Trial Court, is assailing the order dated 23.09.2015 passed by ADJ-03, South East Courts, Saket Courts, New Delhi, whereby the application under Order IX Rule 13 CPC seeking setting aside of the *ex-parte* judgment dated 02.05.2014 was dismissed.
2. In the present proceedings, notice was directed to be issued to the respondent, however, none appeared, resulting in the passing of the order dated 29.05.2019, whereby the application filed under Order V Rule 20 CPC came to be allowed and the respondent was directed to be served through publication. On 25.09.2019, the Joint Registrar (Judicial) noted that despite service, the respondent had not appeared, and the same status was noted by this Court on 10.01.2020. In this backdrop, this Court has proceeded to hear the submissions on behalf of the appellant.
3. Learned counsel for the appellant contends that the appellant was



never served with the summons before the Trial Court. It is submitted that the plaintiff, being the lessee, had arrayed the appellant at the address of the leased premises and not at the actual address of the appellant. A plain reading of the impugned order would reflect that even the Trial Court had observed that the appellant was not served with the summons, however, the subject application under Order IX Rule 13 CPC came to be dismissed on the ground that the same had been filed beyond the prescribed period of limitation. It is further submitted that the Appellant acquired knowledge of the *ex parte* decree only in July, 2014 and applied for certified copies on 14.07.2014. The said copies were prepared on 21.08.2014 whereafter, the subject application came to be filed on 20.09.2014

4. The Trial Court considered 14.07.2014 as the first date from which the period of limitation commenced and opined that, in the absence of the certified copies having been placed on record, the period from 14.07.2014 to 21.08.2014 could not be excluded while computing limitation. However, the present appeal is accompanied by the certified copies, which reflect that the copies were applied for on 14.07.2014 and prepared on 21.08.2014.

5. While considering an application under Order IX Rule 13 CPC, it has been repeatedly held that where the delay has been satisfactorily explained, the Court should be condoning the same.

6. 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

¹ (2021) 2 HCC (Del) 134



“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.

7. The Supreme Court 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

² (2011) 3 SCC 545



Sood [(1992) 1 SCC 70] and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [(2010) 5 SCC 459].)

xxx

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.”

8. Considering that the Trial Court itself observed its satisfaction on non-service of summons and dismissed the application solely on ground of delay which, in the opinion of this Court, is satisfactorily explained. The appellant has filed for the certified copies immediately on coming to know of the *ex parte* judgment and filed the subject application within a month of



certified copies being prepared. Accordingly, the present appeal stands allowed.

9. Consequently, the impugned order is set aside and the suit is restored to its original position. The matter be listed before the concerned Trial Court at the first instance for directions on 22.05.2026.

10. Accordingly, the present appeal is disposed of alongwith pending application.

MANOJ KUMAR OHRI, J

MAY 7, 2026/JYH