HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2705 of 2026

Amul Saxena

.....Appellant(s)

Versus

Gyan Prakash Dwivedi And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Santosh Kumar, Vikrant Pandey
Counsel for Respondent(s)	:	Tarun Jha, Vishwam Dwivedi

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Learned counsel for the appellant and learned counsel for respondents are present.

2. The appellant, by means of the present appeal, has challenged the order dated 10.8.2026 passed by the learned trial court in Misc. Case No. 117 of 2026 (Amul Saxena vs. Gyan Prakash and another), whereby the application filed by the appellant-defendant under Order IX Rule 13 CPC, along with an application under Section 5 of the Limitation Act, was dismissed.

3. Learned counsel for the appellant submitted that the learned trial court committed an error in dismissing the applications for condonation of delay and restoration. The appellant-defendant was unaware of the proceedings and, immediately after learning that the suit had been decided ex parte against him, filed the restoration application.

4. Per contra, learned counsel for the respondent-plaintiff submitted that the defendant was aware of the proceedings, as is evident from the record. He appeared before the court on 3.3.2022 and filed his vakalatnama. An application was also filed on his behalf seeking a direction to the plaintiff to furnish copies of the plaint and other documents. Therefore, the defendant cannot claim that he was unaware of the proceedings.

5. Heard learned counsel for the parties and perused the order dated 10.8.2026. It is evident from the record that Original Suit No. 594 of 2019 (New No. 908 of 2023) was decided ex parte on 14.2.2024. Thereafter, the appellant filed an application under Order IX Rule 13 CPC, along with an application under Section 5 of the Limitation Act, seeking condonation of delay and setting aside of the ex parte decree. The appellant submitted that

the suit, which had been filed for specific performance of a contract, was decreed against him ex parte without his knowledge and that he was unaware of the proceedings. On this basis, he sought condonation of delay and restoration of the suit.

6. Learned trial court observed that the defendant had appeared in the proceedings on 3.3.2022 and had filed his vakalatnama. An application seeking copies of the plaint and other documents had also been filed on his behalf. The learned trial court, therefore, dismissed both applications, observing that the defendant had concealed the material fact of his appearance before the court while claiming that he was unaware of the proceedings. It further held that no sufficient cause had been shown for setting aside the ex parte decree.

7. This Court is of the view that the findings of the learned trial court in dismissing both the applications do not suffer from any infirmity because the provisions of Order IX Rule 13 CPC as well as Section 5 of the Limitation Act are very strict, and both require the parties to approach the court by explaining sufficient cause. The appellant-defendant has not only failed to show sufficient cause for condoning the delay or allowing the restoration application but has also concealed his appearance during the proceedings while claiming that he was unaware of them.

8. In view of the foregoing discussion, the appeal is dismissed. The impugned order dated 10.8.2026 is hereby upheld.

October 24, 2026
Ujjawal

(Anil Kumar-X,J.)

Digitally signed by :-
UJJAWAL
High Court of Judicature at Allahabad