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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(OS) 300/2021**

LAKSHMI MURDESHWAR PURI
S/O SH.DAMODHARAN VAIDHYAN
R/O 195, GAUTAM NAGAR,
NEW DELHI-110049 ....PLAINTIFF

(Through: Mr. Maninder Singh, Sr. Adv. with Ms. Meghna Mishra, Ms. Palak Sharma and Mr. Rohit Kumar, Advocates.)

Versus

1. SAKET GOKHALE
S/0. SUIT AS GOKHALE
502, VIRAL, SAI KRUPA COMPLEX
THANE-401104, MAHARASHTRA.
....DEFENDANT NO.1

(Through: Mr. Amarjit Singh Bedi and Mr. Harsha Vinoy, Advocates.)

2. XCORP.
THROUGH RESIDENT GRIEVANCE OFFICER
MR. VINAY PRAKASH
4TH FLOOR, THE ESTATE,
121 DICKENSON ROAD,
BANGALORE 560 042

ALSO AT:-
1355 MARKET ST #900
SAN FRANCISCO, CALIFORNIA 94103
UNITED STATES ....DEFENDANT NO.2

(Through: None.)

% Reserved on: 16.04.2025
Pronounced on: 02.05.2025

JUDGMENT

I.A. 5123/2025 (filed by defendant No.1 seeking condonation of 184 days' delay in filing of I.A. 5122/2025)

I.A. 5122/2025 (filed by defendant No.1 seeking recall of ex-parte judgment and decree dated 01.07.2024)

The present suit was decreed *ex parte* in favour of the plaintiff/non-applicant and against the applicant/defendant No.1 vide judgment and decree dated 01.07.2024, whereby, this Court had directed defendant No.1 to publish an apology in the terms specified by the Court on his Twitter handle, from which the offending tweets were made, within a period of four (04) weeks from the date of the judgment. The said apology was further directed to remain published on the said Twitter handle for a continuous period of six (06) months. Additionally, the Court had awarded damages to the tune of ₹50,00,000/- in favour of the plaintiff, payable by applicant/defendant No.1 within eight (08) weeks of the passing of the judgment and decree.

2. Subsequent to the passing of the aforesaid judgment and decree, it appears that four applications were filed at the instance of defendant No.1 seeking various reliefs. A brief description of each of these applications is set out below:

S. No.	Application No.	Description
1.	I.A. 5122/2025	Filed Under Order IX Rule 13 read with Section 151 of the CPC, 1908 seeking recall of *Ex-parte* judgment and decree dated 01.07.2024 on behalf of

		applicant/defendant no.1.
2.	I.A. 5123/2025	Filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 184 days in preferring application under Order IX Rule 13 on behalf of applicant/defendant no.1.
3.	I.A. 5124/2025	Filed under Section 151 of the CPC, 1908 seeking condonation of delay of 18 days in re-filing the application under Order IX Rule 13 of CPC seeking recall of *ex-parte* judgment and decree dated 01.07.2024
4.	I.A. 6121/2025	Filed seeking stay of the operation of the judgment and decree dated 01.07.2024 during the pendency of I.A. No. 5122/2025.

3. Learned counsel appearing for the parties have been heard on I.A. 5122/2025 and on I.A. 5123/2025. The decision on these two applications will decide the fate of the remaining I.A.s.

Submissions on behalf of the parties

4. The submissions of Mr. Amarjit Singh Bedi, learned counsel appearing on behalf of the applicant/defendant No.1, are as follows:

4.1 The applicant/defendant No.1 had initially engaged a counsel who filed the written statement and continued him until 10.02.2022. Thereafter, the said counsel ceased to appear in the matter. Mr. Bedi states that, although there appears to be certain communications allegedly sent by the erstwhile counsel, informing his inability to appear, however, it is the categorical position of the applicant/defendant No.1, that, he neither received any electronic communication nor was he provided with a physical copy of the case record.

4.2 It is further submitted that, in the absence of any instructions from the applicant/defendant No.1, his erstwhile counsel sought discharge from the

matter, as noted in the order dated 23.08.2023. In the absence of such intimation, the applicant/defendant No.1 *bona fide* believed that the matter was being duly contested on his behalf, and accordingly, took no further action.

4.3 Mr. Bedi asserts that, due to the applicant/defendant No.1 being entangled in politically motivated and false criminal cases, he was unable to maintain regular contact with his erstwhile counsel or effectively pursue the matter. It is contended that, in compliance with the interim order, the alleged objectionable tweets had already been removed, and therefore, even if the applicant/defendant No.1 is permitted to contest the suit on merits, no prejudice would be caused to the plaintiff.

4.4 Mr. Bedi also points out that the applicant/defendant No.1 was elected to the Rajya Sabha in July 2023 and, since then, has not been residing at his Mumbai address. He has been a permanent resident of Flat No. 4, Sree Alokapuri, Srijan Enclave, Picnic Garden Road, Amrabati Kasba, Kolkata, West Bengal – 700039, and his official residence is at Flat No. 703, Brahmaputra, Dr. B.D. Marg, New Delhi – 110001. Despite this, no attempt was made to serve notice at either of these addresses. It is thus the case of the applicant/defendant No.1 that he remained unaware of the developments in the suit due to non-service of notice at his correct postal addresses.

4.5 Additionally, learned counsel submits that the applicant/defendant No.1 was under severe financial constraints and was unable to afford legal representation during the relevant period. This financial hardship further contributed to the delay in challenging the *ex parte* decree or filing an application under Order IX Rule 13 of the Code of Civil Procedure, 1908

(CPC), within the prescribed limitation period. In support of this submission, Mr. Bedi has drawn the Court's attention to the Income Tax Return of applicant/ defendant No.1 for the Assessment Year 2024-25, which reflects a total income of ₹6,44,920/-.

4.6 Mr. Bedi places reliance on the judgment of the Supreme Court in ***Robin Thapa v. Rohit Dogra***[1], to contend that suits should ordinarily be decided on merits and not terminated by default, whether on the part of the plaintiff or the defendant, and that the cause of justice would be better served by allowing the matter to be adjudicated on merits.

4.7 He further relies on ***Tej Pratap Singh v. Union of India & Ors***.[2], particularly paragraph 12 thereof, and also cites ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy***[3], to substantiate his submission that delay in approaching the Court ought to be condoned in the interest of substantial justice.

5. *Per contra*, the submissions Mr. Maninder Singh, learned senior counsel appearing on behalf of the plaintiff/non-applicant are as follows:

5.1 At the outset, Mr. Maninder Singh, submits that the applicant/defendant No.1 was duly represented by counsel on the very first date of hearing. Once the applicant/defendant No.1 entered appearance and filed a written statement, there was no further requirement under law for re-service of summons. Accordingly, the service of summons stood duly completed. It is submitted that the applicant/defendant No.1's subsequent non-participation in the proceedings amounts to a conscious and deliberate

[1] (2019) 7 SCC 359
[2] 2018 SCC OnLine Del 8368

decision to remain absent, which cannot now be used as a ground to seek recall of the decree.

5.2 Proceeding further, learned senior counsel submits that the applicant/defendant No.1 has failed to establish that he was prevented by "sufficient cause" from appearing and contesting the suit. It is emphasized that the written statement filed by the applicant/defendant No.1 was duly taken into account by this Court while passing the judgment dated 01.07.2024. Therefore, the decree passed cannot be regarded as *ex parte* in the strict sense, but is one rendered after consideration of the pleadings filed on behalf of the applicant/defendant No.1.

5.3 In this regard, Mr. Singh places reliance on the second proviso to Order IX Rule 13 of the CPC, which bars the recall of a decree unless the applicant successfully establishes that he was not duly served or was otherwise prevented by "sufficient cause" from appearing. He draws the Court's attention to paragraph 4(e) of the application seeking condonation for delay, wherein the applicant/defendant No.1 himself admitted that he had intended to file an appeal and had engaged counsel for that purpose. Thus, it is submitted, the applicant/defendant No.1 cannot now feign ignorance of the proceedings or plead lack of knowledge as a ground for delay.

5.4 Mr. Singh further contends that the applicant/defendant No.1 has failed to offer any explanation for the period following the judgment dated 01.07.2024. It is only upon receipt of notice in the execution proceedings on 20.12.2024 that the applicant/defendant No.1 took initial steps to challenge the decree. Even thereafter, there was no prompt action taken.

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[3] (2013) 12 SCC 649

5.5 It is pointed out that counsel for the applicant/defendant No.1 was engaged only on 01.02.2025, and on the same day, the present application for recall was filed. However, the application was not in order and remained under defects in the Registry. No steps were taken to cure the said defects for a period of 27 days. It is only on 27.02.2025, one day before the scheduled hearing of the execution/contempt petition on 28.02.2025, that corrective measures were undertaken, and the application was brought on record. Notably, the execution/contempt petition, filed for non-compliance with the judgment and decree dated 01.07.2024, was listed for hearing on 28.02.2025 and again on 04.03.2025. It is evident that the present application for recall was pressed into service only when the hearing of the execution/contempt petition became imminent. The conduct of the applicant/defendant No.1 in keeping the application in defects and taking corrective action only at the eleventh hour demonstrates a lack of *bona fides*.

5.6 In continuation, it is submitted that the applicant/defendant No.1 is an active user of the internet and social media platforms, including Twitter, and claims to have lakhs of followers. On this basis, Mr. Singh contends that the applicant/defendant No.1 was well aware of the progress of the present proceedings and the orders passed from time to time. It is, therefore, apparent that the absence of the applicant/defendant No.1 from the proceedings was not due to any *bona fide* reason, but rather a deliberate and wilful disregard of the authority of this Court. Such conduct, it is submitted, reflects a conscious non-participation and disentitles the applicant/defendant No.1 from any relief, including seeking condonation of delay.

5.7 In conclusion, learned senior counsel submits that the applicant/defendant No.1, in view of his own conduct and the sequence of events, is not entitled to any relief under Order IX Rule 13 of CPC. In support of his submissions, reliance is placed on the judicial pronouncements in the case at ***Basant Singh v. Roman Catholic Mission***[4]***, Parimal v. Veena***[5]***, Hira Sweets & Confectionary Private Limited and Ors.. v. Hira Confectioners***[6]***, Ramesh Chander Goel v. Daya Kishan Goel***[7]***, Shivam Plastic Industries v. Nikhil Gupta***[8]***, Mohd. Shueb v. Fayza Nisar and Anr.***[9]***, Strix Ltd. v. Maharaja Appliances Limited.***[10]***, Collector of Balasore v. Ashutosh Roy***[11]

Analysis

6. I have considered the submissions made by learned counsel appearing for the parties and have perused the record.

7. Initially, notice on I.A. 5123/2025 and I.A. 5124/2025 were directed to be issued. Pursuant thereto reply was filed by the plaintiff. However, the parties comprehensively addressed the arguments on the merits of the application seeking recall of the *ex parte* judgment and decree i.e I.A. 5122/2025. Considering the arguments presented, the Court first proceeds to examine the law as set out in Order IX Rule 13 of CPC and its applicability to the instant case.

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[4] (2002) 7 SCC 531
[5] (2011) 3 SCC 545
[6] (2021) 2 SCC Del 1823
[7] 2023 SCC OnLine Del 433
[8] 2023 SCC OnLine Del 972
[9] 2024 SCC OnLine Del 3764
[10] 2025 SCC OnLine Del 686
[11] 1962 SCC OnLine Ori 16

Natural Justice as the Cornerstone of Order IX Rule 13 CPC

8. The principle of natural justice is foundational to the legal system, ensuring that every party is given a fair opportunity to be heard. In the context of Order IX Rule 13 of the CPC, this principle finds particular relevance. This provision is designed to offer a remedy to a defendant against whom an *ex-parte* decree has been passed, by allowing them to approach the Court and seek the setting aside of such a decree. The objective is to ensure that no party is deprived of their right to defend without due cause and that justice is not defeated on mere technicalities.

9. However, the application of natural justice under this Rule is not absolute but conditional. The Court must be satisfied that the defendant had a "sufficient cause" for their non-appearance on the date of hearing. Only upon such satisfaction can the Court exercise its discretion to set aside the *ex-parte* decree. Therefore, while the Rule upholds the spirit of natural justice, it also seeks to balance it with the need for procedural discipline and timely adjudication.

Examining the Legal Threshold of "Sufficient Cause"

10. Before dealing with the application under Order IX Rule 13 of the CPC, it becomes necessary to refer to the guiding legal principles laid down by the Supreme Court in ***Parimal v. Veena alias Bharti***[12]. In the said decision, the Court emphasized that the second proviso to Order IX Rule 13 CPC imposes a mandatory condition, requiring the Court to refrain from setting aside an *ex parte* decree unless the statutory requirements are clearly

[12] (2011) 3 SCC 545

fulfilled. The expression *"sufficient cause"* as used in various statutes, including the CPC, has been judicially interpreted to mean a cause that is adequate or enough to explain the absence or delay and must serve the purpose intended. The term implies more than mere formality, it must meet a standard that would satisfy a reasonable and prudent person, acting with due care under similar circumstances. It has also been observed that "sufficient cause" must reflect that the party was neither negligent nor lacking in *bona fides*. The explanation offered should not suggest that the party failed to act diligently or remained willfully inactive. Ultimately, whether *"sufficient cause"* exists is to be assessed on the particular facts and circumstances of each case, with the Court exercising its discretion in a fair, judicious, and reasonable manner.

11. There is no gainsaying that assessing whether an applicant has established *"sufficient cause"* is central to the determination of an application for condonation of delay. In this context, it is considered appropriate to refer to the relevant judicial decision in ***G. Ramegowda, Major and Others v. Special Land Acquisition Officer, Bangalore***[13], where the Supreme Court held:

> *"14. The contours of the area of discretion of the Courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.; Shakuntala Devi Jain v. Kuntal Kumari; Concord of India Insurance Co. Ltd. v. Nirmala Devi; Lata Mata Din v. A Narayanan; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts.*

[13] (1988) 2 SCC 142

> *However, the expression ""sufficient cause"" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. ..."*

12. It is also well-settled that the test of *"sufficient cause"* in cases of delay is closely linked to "*reasonableness*" and "*conduct of the party/applicant*". Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing "sufficient cause" and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law, as a result of his acting vigilantly. (***Balwant Singh (Dead) v. Jagdish Singh and Others***[14])

13. While Courts generally adopt a liberal, pragmatic, and justice-oriented approach, eschewing a strictly pedantic interpretation—when considering applications for condonation of delay, the concept of '"sufficient cause"' must still be assessed in its true spirit. Being both paramount and pivotal to the exercise of judicial discretion, it cannot be given undue weight in a mechanical manner, particularly where the applicant's case lacks *bona fides* or the reasons cited are trivial, vague, or lacking in substance.

14. Furthermore, the policy behind the term '"sufficient cause"' has been analyzed by the Supreme Court in a catena of decisions, including ***Esha***

[14] (2010) 8 SCC 685

Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others reported[15]**,** where reference was made to the following key observation from ***Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and Another reported***[16]:-

> *"14. ...The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if "sufficient cause" is shown for not availing the remedy within the stipulated time."*

15. In ***Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*** [17], the Supreme Court has highlighted that condonation of delay is a discretionary power of the Court, in exercise of which the *bona fides* of the applicant assume grave importance. In the said decision, it was opined:-

> *"23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*
> *24.* ***What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the***

[15] (2013) 12 SCC 649
[16] (2010) 5 SCC 459
[17] (2012) 5 SCC 157

delay."

16. Reference may also be made to the decision rendered by a Co-ordinate Bench of this Court in ***ICICI Lombard General Insurance Co. Ltd. v. Rojida Khatun & Ors***.[18], where the Court reiterated the significance of assessing the *bona fides* of an applicant seeking condonation of delay. It was emphasized that under Section 5 of the Limitation Act, 1963 (Limitation Act) the applicant must show that they were prevented by "sufficient cause" from filing the appeal, and that "sufficient cause" has consistently been interpreted by Courts as a reason beyond the applicant's control.

Embargo on Setting Aside Ex-Parte Decree Solely for Irregularity in Service of Summons under Order IX Rule 13 CPC

17. The original Rule 13 of Order IX of the CPC stipulated that if an *ex-parte* decree was passed against a defendant who proved to the Court that they had not been properly served with the summons, the Court was obligated to set aside the decree. It was irrelevant whether the defendant knew about the ongoing suit or was aware of the hearing date but still failed to appear in Court.

18. The Law Commission considered the above aspect and the expression "duly served". In its Twenty-seventh Report, the Commission stated:

> *"1. Under Order IX Rule 13, if the Court is satisfied either that the summons has not been served, or that the defendant was prevented by "sufficient cause" from appearing, etc., the ex parte decree should be set aside. The two branches of the Rule are distinctive and the defendant, whatever his position may be in respect of one branch, is entitled to the benefit of the other branch if he satisfies the Court that*

[18] 2015 SCC OnLine Del 10646

he has made good his contention in respect of the other branch.

2. Now, cases may arise where there has been a technical breach of the requirements of 'due service', though the defendant was aware of the institution of the suit. It may well be, that the defendant had knowledge of the suit in due time before the date fixed for hearing, and yet, apparently he would succeed if there is a technical flaw. This situation can arise e.g. where the acknowledgment on the duplicate of the summons has not been signed. There may be small defects in relation to affixation, etc., under Order 5 Rule 15. At present, the requirements of the Rules regarding service must be strictly complied with, and actual knowledge (of the defendant) is immaterial. (There are not many decisions which hold that even where there has not been due service, yet the decree can be maintained, if the defendant knew the date of hearing.)

3. Where a literal conformity with CPC is wanting, the second part of column third of Article 164, Limitation Act, 1908 (now Article 123, Limitation Act, 1963) applies. As to substituted service, see discussion in undermentioned decision.

4. The matter was considered exhaustively by the Civil Justice Committee, which recommended a provision that a decree should not be set aside for mere irregularity. Local amendments made by several High Courts (including Allahabad, Kerala, Madhya Pradesh, Madras and Orissa) have made a provision on the subject, though there are slight variations in the language adopted by each. Such a provision appears to be useful one, and has been adopted on the lines of the Madras Amendment."

19. Further, the Law Commission, in its Fifty-fourth Report, revisited the issue and reiterated its earlier stance on Order IX Rule 13. It emphasized that if the Court is satisfied that the summon was either not served or the defendant was prevented by "sufficient cause" from appearing, the *ex parte* decree must be set aside. The Commission clarified that the two branches of the Rule are distinct, and a defendant, regardless of their situation under one branch, is entitled to the benefit of the other branch if they can prove their case under that provision. Furthermore, the Commission noted that, while several points were discussed regarding this Rule, the broad objective

remains to prevent a decree from being set aside solely due to irregular service if the defendant had knowledge of the decree. This conclusion was consistent with the findings of the earlier report, where amendments were suggested to reflect this principle.

20. Accepting the recommendations of the Law Commission, the Rule was amended by the Code of Civil Procedure (Amendment) Act, 1976. Rule 13 of Order IX with effect from February 1, 1977 now reads thus:

> ***"ORDER IX-APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE***
>
> *XXX XXX XXX*
>
> *13. Setting aside decree ex parte against defendant In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;*
>
> *Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:*
>
> *[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiffs claim]*
>
> *Explanation.-Where there has been an appeal against a decree passed ex-parte under this Rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this Rule for setting aside that ex parte decree." (emphasis supplied)*

21. It is, therefore, clear that the legal position under the amended CPC is not whether the defendant was actually served with the summons in

accordance with the procedure laid down and in the manner prescribed in Order V of the CPC, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether he had sufficient time to appear and answer the claim, of the plaintiff. Once these two conditions are satisfied, an *ex parte* decree cannot be set aside even if it is established that there was irregularity in service of summons. If the Court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non-service of summons for setting aside *ex parte* decree passed against him by invoking Rule 13 of Order IX of the CPC. (**Sunil Poddar v. Union Bank of India**[19]**).** Following paragraph reaffirms the aforesaid position:-

> "***23***.*It is, therefore, clear that the legal position under the amended Code is not whether the defendant was actually served with the summons in accordance with the procedure laid down and in the manner prescribed in Order 5 of the Code, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether he had sufficient time to appear and answer the claim of the plaintiff. Once these two conditions are satisfied, an ex parte decree cannot be set aside even if it is established that there was irregularity in service of summons. If the Court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non-service of summons for setting aside ex parte decree passed against him by invoking Rule 13 of Order 9 of the Code….."*

22. Moreover, this Court, in ***Pranesh Gupta v. Jagdish Bansilal Khurana***[20], reaffirmed the aforesaid principle laid down by the Supreme Court in paragraph no 10 of the judgment.

23. Further, in ***Sweety Gupta* v. *Neety Gupta***[21], the Division Bench of this Court held that this principle finds further statutory backing in the second

[19] (2008) 2 SCC 326
[20] 2019 SCC OnLine Del 6596

proviso to Order IX Rule 13, introduced by the Amending Act 104 of 1976 with effect from 01.02.1977, which expressly provides that an *ex parte* decree shall not be set aside merely on the basis of an irregularity in the service of summons. There is, therefore, no ambiguity in law that mere procedural defects in service, when the defendant was otherwise aware of the suit, do not justify interference with an *ex parte* decree. Relevant portion of the judgment is reproduced hereunder:

> *"12. Thus under the amended provision it makes no difference as to whether the defendant was actually served with the summons in accordance with the procedure laid down and in the manner prescribed in Order V of the Code, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether he had sufficient time to appear and answer the claim of the plaintiff. If the answer to the aforesaid two posers are found in the affirmative, there can be no rescinding of an ex-parte decree even if it is proved that the summons were not duly served. What is of importance now is that the Court is required to be convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared to the claim of the plaintiff."*

24. The objective of the process of issuance of summons is to obtain the presence of the defendant for final opportunity to be given to him to rebut the claim against him. Thus, if he appears at the initial stage in a sense there is waiver of the right to have summons served on him. This position has been explained in the case of ***Sri Nath Agrawal* v. *Sri Nath*** [22] and to that extent the principle has been upheld by the Supreme Court in ***Siraj Ahmad Siddiqui* v. *Prem Nath Kapoor***[23]. The following paragraph of the Supreme Court decision reaffirms the aforesaid position:

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[21] 2016 SCC OnLine Del 5668

[22] AIR 1981 All 400

[23] (1993) 4 SCC 406

> *"14…..<u>The High Court said that if the defendant appears before the Court after the registration of the suit and he is informed about the nature of the claim and the date fixed for reply thereto, the defendant must be deemed to have waived the right to the summons served on him. The same legal position would arise when a defendant suo motu appeared before the Court before the actual service of the summons</u>. In such a case, if some date was fixed for filing the written statement or for the hearing of the suit it would be too technical to hold that service of the summons in the ordinary course was still required and that further proceedings in the suit would take place only thereafter…"*

25. Further, in ***Basant Singh*** , the Supreme Court reiterated the principle that the proviso to Order IX Rule 13 of the CPC places a clear embargo on the setting aside of an *ex parte* decree solely on the ground of mere irregularity in the service of summon, which is also reaffirmed in the following paragraph-

> ***"8.*** *Second proviso to Order 9 Rule 13 casts an embargo on the Court that a decree passed ex parte shall not be set aside merely on the ground that there has been an irregularity in the service of summons."*

<u>Factual Matrix of the Instant Case</u>

26. Having examined the relevant legal provisions and judicial pronouncements on the scope and applicability of Order IX Rule 13 of the CPC, as well as the principles laid down by the Supreme Court and other Courts, the Court now turns to the facts of the present case. It is in the backdrop of this settled legal framework that the conduct of the parties, the manner of service of summons, and the reasons cited for non-appearance must be assessed to determine whether "sufficient cause" has been shown to justify setting aside the *ex parte* decree.

27. The facts of the case indicate that the plaintiff/non-applicant instituted the present civil suit in relation to certain tweets posted by the

applicant/defendant No.1 in the public domain, which were alleged to have defamed the plaintiff/non-applicant and her family. Without delving into facts not directly relevant for the adjudication of the present application, it is sufficient to note that, *vide* judgment and decree dated 01.07.2024, the suit was decreed in favour of the plaintiff/non-applicant and against the applicant/defendant No.1. The directions issued by this Court in the final judgment are contained in paragraph nos. 104, 106, 108, and 109, which are extracted below for ease of reference:

> *"104. Accordingly, the very first thing that defendant No.1 is directed to do is to publish an apology in the following terms on his own Twitter handle from which he had put-out the offending tweets, as also prominently in the Times of India newspaper (Delhi Edition, size : 6 cm x 7 cm on page 3) stating the following :*
>
> *"Apology*
>
> *I unconditionally apologise for having put-out a series of tweets against Amb. Lakshmi Murdeshwar Puri on 13th & 23rd June 2021, which tweets contained wrong and unverified allegations in relation to the purchase of property by Amb. Puri abroad, which I sincerely regret.*
> *Saket Gokhale"*
>
> *Let requisite compliance be made within 04 (four) weeks. The apology so tweeted shall be retained on defendant No.1"s Twitter handle for a period of 06 (six) months from the date it is put-out.*
> *.....*
>
> *106. Furthermore, defendant No.1 is restrained from publishing any further tweet or any other content on any social-media or other electronic platform in relation to the imputations made in the offending tweets.*
> *.....*
>
> *108. Insofar as the claim for damages is concerned, the plaintiff has sought damages (of Rs. 5 crores) not for herself in a sense, but has instead prayed that damages be granted to her and be then deposited in the PM Cares Fund. This is an unusual way of claiming damages. The plaintiff could have claimed damages and could have then disposed-of them in any manner she pleased, including by making a donation to any charity or*

fund. However, to ask the Court to grant damages, and to then pray that the Court remit them to a particular fund is not tenable.

109. It is this Court's view, that no amount of monetary award can truly compensate for damage to reputation, however upon a balance of all considerations, defendant No.1 is directed to pay to the plaintiff damages in the sum of Rs. 50 lacs within 08 (eight) weeks."

I.A. 5123/2025

28. The Court must first consider the delay application, I.A. 5123/2025, filed by the applicant/defendant No.1 under Section 5 of the Limitation Act. It is essential to consider whether the delay in filing the application has been sufficiently explained. For this purpose, the Court will examine the reasons put forth by the applicant/defendant No.1 in support of the prayer for condonation of delay.

29. It is an admitted position that the applicant/defendant No.1 became aware of the *ex parte* judgment and decree dated 01.07.2024 as early as 02.07.2024. It is also undisputed that a written statement had already been filed by the applicant/defendant No.1 in the main civil suit. Accordingly, it is evident that the applicant/defendant No.1 was aware of both the pendency of the civil suit and the judgment rendered therein. This knowledge is not denied.

30. The first plea taken by applicant/defendant No.1 is premised on the ground that on 19.08.2024, an advocate was engaged to take appropriate proceedings. However, it is relevant to note that the period of limitation for filing an application under Order IX Rule 13 CPC is thirty (30) days from the date of knowledge of the decree. Despite this, no steps were admittedly taken by the applicant/defendant No.1 to file such an application within the

prescribed period.

31. Even assuming, for the sake of argument, that there existed some *bona fide* reason preventing the applicant/defendant No.1 from acting prior to 19.08.2024, the subsequent conduct does not reflect diligence. The application seeking recall of the judgment and decree dated 01.07.2024 was eventually filed only on 19.02.2025, indicating a prolonged period of inaction.

32. It has been stated that the earlier counsel did not pursue the matter between 19.08.2024 and January 2025, following which new counsel was engaged. This explanation appears to be an afterthought. The applicant/defendant No.1 is admittedly an educated and responsible individual, actively engaged in various legal proceedings, including both civil and criminal matters. In such circumstances, any purported lapse on the part of counsel cannot, by itself, be a ground for condonation of delay, unless the party is able to establish due diligence and *bona fides* in approaching the Court within the prescribed limitation.

33. Moreover, no material has been placed on record to indicate what steps, if any, were taken by the applicant/defendant No.1 between 19.08.2024 and January 2025 to pursue the matter or follow up with the previously engaged counsel.

34. In view of the foregoing facts and circumstances, the applicant/ defendant No.1 has failed to establish a "sufficient cause" for the delay of 184 days in filing the application under Order IX Rule 13 of the CPC. Consequently, the application seeking condonation of delay, i.e., I.A. 5123/2025, is hereby dismissed.

35. It is further relevant to note that the civil suit was taken up for the first time on 08.07.2021. On that day, I.A. 7944/2021, an application filed under Order XXXIX Rules 1 and 2 CPC, was listed and detailed arguments were heard. The order sheet for that date clearly records that the applicant/defendant No.1 was duly represented by Mr. Sarim Naved, learned counsel, on the very first date of hearing. The order passed on I.A. 7944/2021 dated 08.07.2021 reads as under:

> "***I.A.7941/2021in CS(OS) 300/2021***
>
> *1. Subject to the plaintiff depositing the requisite Court fees within four weeks from today, exemption is granted for the present.*
>
> *2. The application is disposed of.*
>
> ***I.A.7942/2021in CS(OS) 300/2021***
>
> *1. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.*
>
> *2. The application is disposed of.*
>
> ***I.A.7943/2021 in CS(OS) 300/2021***
>
> *1. The plaintiff is permitted to file additional documents, if she chooses, within four weeks from today.*
>
> *2. The application stands disposed of accordingly.*
>
> ***CS(OS) 300/2021 & I.A. 7944/2021***
>
> *1. Detailed arguments have been heard, as advanced by Mr. Maninder Singh, learned Senior Counsel for the plaintiff and Mr. Sarim Naved, learned Counsel for the defendant.*
>
> *2. During the course of arguments, a query was put to Mr. Naved as to whether his client had approached any governmental or other official authority, or even sought any clarification from the plaintiff, before uploading the tweets with which the plaintiff is aggrieved. He answered in the negative. He points out, however, that the defendant "tagged" the Hon'ble Finance Minister in his first tweet which according to him, constitutes due notice to the Hon'ble Finance Minister.*
>
> *3. A second query was put to Mr. Naved as to whether the law permitted any citizen, who had any grievance against a retired public servant or*

against a person standing for election, regarding any declaration or affidavit made by such person, to make allegations against such persons on social media platforms without, in the first instance, seeking any clarification in that regard either from the said person or from any competent public authority. Mr. Naved's response was that "unfortunately, that is the law".

4. Mr. Naved was, therefore, requested to provide any judgement, which would support such a stand. He has been unable to provide any such judgement. He candidly acknowledges that he has not come across any judgement to the said effect, but submits that that is his understanding of the law. 5. Before conclusion of proceedings, Mr. Naved was also directed to take instructions as to whether his client was willing to remove the tweets and other material against the plaintiff, as uploaded by him on the internet. He submits that his instructions are in the negative.

6. Orders are reserved to be pronouneed on 13th July, 2021 at 10.30 A.M."

36. A perusal of the record further reveals that an interim injunction was granted in favour of the plaintiff/non-applicant *vide* judgment dated 13.07.2021, whereby the non-applicant/plaintiff's application under Order XXXIX Rules 1 and 2 CPC was disposed of.

37. In paragraph 33 of the said order, this Court, *inter alia*, directed the applicant/defendant No.1 to immediately delete from his Twitter account all tweets referred to in the plaint, as well as any related tweets forming part of the same thread or sequence. The applicant/defendant No.1 was also expressly restrained from posting any defamatory, scandalous, or factually incorrect content against the plaintiff/non-applicant or her husband. In the alternative, directions were issued to Twitter, Inc. to take down the specified tweets available at the URLs mentioned, along with any related tweets forming part of the trail, as detailed in paragraph 33(iii) of the said order.

38. Following the initial interim directions issued by this Court, the record reflects that the applicant/defendant No.1 was represented by counsel

on multiple dates during the pendency of the suit. The appearance of counsel for applicant/defendant No.1 is recorded as under:

Sr. No.	*Date*	*Represented by*
1.	*09.09.2021*	*Ms. Suroor Mander and Ms. Ashu Davar, Adv.*
2.	*10.09.2021*	*Ms. Anshu Davar, Adv with Mr. Kamran Javed, Adv.*
3.	*24.11.2021*	*Ms. Anshu Davar, Adv.*

39. The proceedings of 24.11.2021 further indicate that a written statement was filed on behalf of applicant/defendant No.1 and was taken on record. It was also noted on the same date that the interim order dated 13.07.2021 had been duly complied with by the said defendant.

40. Thereafter, on 07.02.2022, there was no appearance on behalf of applicant/defendant No.1. However, on 10.02.2022, appearance was again marked by Mr. Sarim Naved, Ms. Anshu Davar, and Mr. Kamran Javed, Advocates, on behalf of applicant/defendant No.1.

41. The plaintiff/non-applicant also filed a replication to the written statement of applicant/defendant No.1, and the learned Joint Registrar recorded that pleadings stood completed qua applicant/ defendant No.1.

42. Subsequently, counsel for the applicant/defendant No.1 ceased to appear in the matter. There was no representation before this Court on various dates, including 13.04.2022, 06.07.2022, 06.10.2022, 11.01.2023, and 30.05.2023. In light of continued non-appearance, on 14.07.2023, the

learned Joint Registrar directed issuance of Court notice to applicant/defendant No.1 and his counsel.

43. Thereafter, on 07.08.2023, it was recorded that the Court notice had been served on counsel for applicant/defendant No.1. It was further noted that Ms. Anshu Davar, Advocate, made a statement on behalf of Mr. Sarim Naved, Advocate, that although he had represented applicant/defendant No.1 earlier, a no-objection had already been given to the said defendant in March 2022 for engaging another counsel.

44. When the matter was listed before the Court on 23.08.2023, counsel appearing for applicant/defendant No.1 formally sought discharge, citing lack of instructions. Consequently, the Court directed issuance of fresh Court notice to the said defendant through all permissible modes.

45. Moreover, on 25.09.2023, the learned Joint Registrar perused the office note, which recorded that notice had been issued to applicant/defendant No.1 through WhatsApp and e-mail.

46. In view of continued non-appearance, vide order dated 19.12.2023, this Court proceeded *ex parte* against applicant/defendant No.1. Paragraphs 2 to 7 of the said order record the rationale for proceeding *ex parte*, and read as under:

> "*2. In view of the non-appearance on behalf of defendant no.l on the previous few dates of hearing, vide order dated 23.08.2023, it was inter-alia directed as under:-*
>
> > *"4. If there is no appearance on behalf of defendant no. 1 even on the nextdate of hearing, the said defendant shall be proceeded ex-parte."*
>
> *3. On 23.08.2023, learned counsel for the defendant no.l had also taken a discharge in the matter on the ground that he had not received instructions from the defendant no.l. Consequently, Court notice was directed to be*

issued to the defendant no. 1.

4. Subsequently, on 25.09.2023, there was again no appearance on behalf of the defendant no.l. The learned Joint Registrar (Judicial) after taking note that the Court notice had been served upon the defendant no.l, re-notified the matter for 08.11.2023.

5. Again, on 08.11.2023, there was no appearance of defendant no.l. Learned Joint Registrar (Judicial), took note of the additional affidavit of service filed on behalf of plaintiff, wherein it was sought to be brought out that the defendant no.l had been duly served, reference was also made in the said affidavit to the application filed by the learned counsel for the defendant no.l seeking discharge in the matter. The said application, as noticed herein above, stood allowed on 23.08.2023. Taking note of these circumstances, the Learned Joint Registrar (Judicial) once again re-notified the matter.

6. In the above circumstances, and in view of the continuous nonappearance on the part of the defendant no. 1, the said defendant no.l is directed to be proceeded ex-parte.

7. List before the Joint Registrar (Judicial) on 20.12.2023, the date already fixed."

47. Subsequently, *ex parte* evidence was led by the plaintiff/non-applicant. Upon consideration of the material placed on record, this Court, *vide* judgment dated 01.07.2024, decreed the Civil Suit in favour of the non-applicant/plaintiff and against applicant/defendant No.1, in terms of the directions already extracted in the preceding paragraphs.

48. Even in the present application filed under Order IX Rule 13 CPC, i.e., I.A. 5122/2025, the applicant/defendant No.1 has admitted the following aspects:

"*3. The Applicant, at the outset, submits that he entered appearance on 08.07.2021 upon advance notice and filed his written statement on 09.09.2021 through counsel Sh. Sarim Naved.*

4. The Written Statement was taken on record vide order dated 10.02.2022. Accordingly, the pleadings stood completed qua the Defendant No. 1/Applicant herein. The counsel for the Applicant was appearing before the Court till this date."

49. A perusal of the averments made in the present application, coupled with the submissions advanced by the learned counsel appearing on behalf of applicant/defendant No.1, reveals that an attempt has been made to establish that no Court notice was ever received by the said defendant. It is further contended that no formal intimation regarding the discharge of counsel, who had been duly engaged by applicant/defendant No.1, was communicated to him.

50. In light of the above legal position and judicial pronouncements, it is evident that the essential test under Order IX Rule 13 of the CPC, post-amendment, is not limited to the technicality of formal service of summons but centers on whether the applicant/defendant No.1 had actual notice of the proceedings and adequate time to respond. Once these conditions are satisfied, the plea of irregular service cannot be used as a ground to set aside an *ex parte* decree. In the present case, the applicant/defendant No.1 proceeded to file his written statement, it clearly establishes that he had sufficient knowledge of the suit and ample opportunity to defend himself. Therefore, he cannot now take recourse to Order IX Rule 13 to challenge the proceedings on the ground of non-service or irregular service of summons

51. Furthermore, no provision of law has been brought to the attention of this Court that mandates repeated issuance of Court notices during the pendency of proceedings merely because a party has chosen to abandon its participation. The issuance of Court notice, appears to have been resorted to out of abundant caution rather than legal necessity. What truly matters is that the applicant/defendant No.1 had notice of the plaint and the claims made therein, an aspect which remains undisputed. Accordingly, the contention

that the Court notice was not duly served holds no merit. Even otherwise, the applicant/defendant No.1 has to blame himself for the alleged non-service.

52. In accordance with Chapter III, Rule 3 of the Delhi High Court (Original Side) Rules, 2018 (*2018 Rules*), every initial pleading, petition, or application must mandatorily state the address for service in the prescribed manner. While the term "pleading" is not defined under the 2018 Rules, recourse must be taken to Order VI Rule 1 of the CPC, which defines a "pleading" as a "plaint" or "written statement".

53. In the present case, the applicant/defendant No.1 provided the address in the written statement i.e "502, Viral, Sai Krupa Complex, Thane-401104, Maharashtra". However, no effort was made by the said applicant/defendant No.1 to update the changed address in the record. As per the procedural mandate, unless the concerned party formally places the change of address on record, it cannot later claim that service of notice at the previously declared address is invalid or ineffective.

54. Moreover, Order VI Rule 14A of the CPC aligns with broader procedural reforms aimed at enhancing transparency and efficiency in Court proceedings. This Rule mandates that each party must provide a statement or address for service, thereafter only any document served at that address is considered to be properly delivered. It reinforces the procedural framework by promoting efficiency, supporting digitization, and ensuring greater accountability in the legal process.

55. In line with the aforesaid position, this Court in ***Institute of Chartered Accountants of India v. Shree Raj Travels & Tours Ltd***.[24], emphasized that it has been deliberately put in Order 6 Rule 14A CPC, as a statutory obligation that if the party to suit shifts his address, then it is incumbent upon such a party to file fresh address so that whenever and wherever the fresh notices have to be served, is known. A person cannot take advantage of his own wrong, more so, in failing to comply of the statutory obligation to give fresh address.

56. Moreover, it is also, urged that applicant/defendant No.1, who was simultaneously defending himself in multiple criminal cases pending in the State of Gujarat, was unable to diligently pursue or monitor the proceedings in the present civil suit. In support of this plea, reference is made to paragraphs 17 to 23 of the application I.A. 5122/2025, which encapsulate the detailed grounds and circumstances relied upon by applicant/defendant No.1 to justify the delay and seek recall of the *ex parte* judgment.

> "*17.It is also relevant to submit that Applicant/Defendant no.1 during the pendency of the aforesaid suit became victim of several political prosecutions wherein following cases were registered and are pending against him:*
>
> *a. Cyber Crime Police Station Crime Registration No. 11191067220154/2022 (Criminal Case No. 25338/2023) registered in Ahmedabad City for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 120- B of the Indian Penal Code read with sections 66(c) and 66(d) of the Information Technology Act ("Cyber Crime FIR").*
>
> - *Defendant no.1 was arrested in the said case on 06.12.2022 and was released on bail on 08.05.2023 after the directions of Hon'ble Supreme Court in SLP (CRl.) No. 2779/2023. Copy of Bail order dated 08.05.2023 is annexed as DOCUMENT NO.15.*

[24] 2014 SCC OnLine Del 3659

- *Trial in said case begun on 08.10.2023 wherein 53 hearings have taken place, and Applicant has attended 43 of said 53 hearings. Copy of case status and order sheets showing the presence of Defendant no.1 on such hearings is DOCUMENT NO.16.*

  b. Based on said Cyber Crime FIR, PMLA – SPECIAL CASE no. 2/2023 under Sec. 3 and 4 of the Prevention of Money Laundering Act, 2002, wherein 59 hearings have taken place, and Applicant has attended 43 of said 59 hearings. Copy of case status and order sheets showing the presence of Defendant no.1 on such hearings is DOCUMENT NO.17 (Colly)

  c. Defendant no.1 is also placing on record plane tickets evidencing his travel for such hearings which is annexed as DOCUMENT NO.18.

  18.On the basis of said service report, the Defendant no.1 was proceeded ex-parte on 19.12.2023. Thereafter, without framing any formal issues, matter was heard on final submissions on 21.02.2024, 13.03.2024, 16.05.2024 and matter was reserved for Judgment.

  19.It is submitted that because of being engrossed in politically motivated false criminal prosecutions against him, the Applicant/Defendant no.1 could not pursue or follow up with erstwhile counsel.

  20.It is submitted that the Applicant was made aware of the passing of the ex-parte judgment and order dated 01.07.2024 on 02.07.2024. However, the Applicant was facing multiple cases in the State of Gujarat as detailed supra and he was focused on protecting his life and liberty and was thus not able to concentrate on the present suit.

  21.However, he did engage in the services of an Advocate named Brajesh Tomar and approached him to challenge the order on 19.08.2024. Copy of exchange of communications via WhatsApp are annexed as DOCUMENT NO.19

  22.He further transferred an amount of Rs. 4,500 towards engaging his services and kept on receiving assurance that his appeal was being drafted, and he need not worry as no adverse orders can be passed since he is now seized of the matter. In fact,Mr. Brajesh Tomar applied for the certified copy of the order dated 01.07.2024 vide Diary No. 3867/2024 and thereafter, the Applicant was informed that necessary steps will be undertaken to file an appeal against the order dated 01.07.2024. Proof of payment on Advocate Brajesh Kumar is annexed as DOCUMENT NO.20

  23.Finally, on 20.12.2024, on receipt of notice by Plaintiff in Execution Petition i.e. 112/2024, Defendant no.1 came to know that his lawyer had not filed the appeal against order dated 01.07.2024 as discussed, and therefore approached various lawyers, but none was interested in

taking on the case. Finally, the present counsel for the Applicant was engaged in the month of January 2025 and the instant Application is being preferred."

Besides, the reasons explained as to why ex-parte judgment and decree deserves to be set aside, the delay in filing the said application within limitation has been explained in paragraph 4 of I.A. 5123/2025. The paragraph no.4 of the same reads as under: "4. In that regard, the Applicant submits that he could not prefer the said application for recall within 30 days of Judgment and Order dated 01.07.2024 in as much as:

a. The Applicant was not served at all and in none of the modes as acknowledged in the office noting i.e. through either Whatsapp or through email. It is nobody's case that the Applicant was served on his postal address. Further, the Compliance Affidavit in terms of Order dated 25.09.2023 filed by the Plaintiff is categorically denied and disputed by the Applicant/Defendant no. I

b. It is further relevant to submit that the Applicant was elected to Rajya Sabha in July 2023 and has ever since not been residing at his Mumbai address and has been permanent resident of Flat no. 4, Sree Alokapuri, Srijan Enclave, Picnic Garden Rd. Amrabati Kasba, Kolkata, West Bengal 700039 and official resident of Flat No.703, Brahmaputra, Dr. B.D. Marg, New Delhi - 110001. However, no efforts were made to serve on any of his postal address.

c. It is submitted that because of being engrossed in politically motivated false criminal prosecutions against him, the Applicant/Defendant no. 1 could not pursue or follow up with erstwhile counsel.

d. It is submitted that the Applicant was made aware of the passing of the ex-parte judgment and order dated 01.07.2024 on 02.07.2024. However, the Applicant was facing multiple cases in the State of Gujarat as detailed supra and he was focused on protecting his life and liberty and was thus not able to concentrate on the present suit.

e. However, the Applicant did engage in the services of an Advocate named Brajesh Tomar and approached him to challenge the order on 19.08.2024. He further transferred an amount of Rs. 4,500 towards engaging his services and kept on receiving assurance that his appeal was being drafted, and he need not worry as no adverse orders can be passed since he is now seized of the matter. In fact, Mr. Brajesh Tomar applied for the certified copy of the order dated 01.07.2024 vide Diary No. 3867/2024 and thereafter, the Applicant was informed that necessary steps will be undertaken to file an appeal against the order dated 0I .07.2024.

f. Finally, on 20.12.2024, on receipt of notice by Plaintiff m Execution Petition i.e. 112/2024, Defendant no. I came to know that his lawyer had not filed the appeal against order dated 01.07.2024 as discussed, and therefore approached various lawyers, but none was interested in taking on the case.

g. Finally, the present counsel for the Applicant was engaged in the month of January 2025 and the instant Application is being preferred."

57. Upon cumulative appraisal of the material on record and the submissions made, the following factual position emerges:

i. The applicant/defendant No. 1 entered appearance in the civil suit through duly engaged counsel, who filed a Vakalatnama—an engagement which is undisputed.

ii. A written statement was filed on behalf of the applicant/defendant No. 1.

iii. The address furnished along with the written statement has remained unchanged throughout the proceedings, with no steps taken to update it.

iv. On 02.07.2024, the applicant/defendant No. 1 became aware of the judgment and decree passed in the suit on 01.07.2024.

v. Despite such knowledge, no action was taken until 19.08.2024 to challenge the judgment—well beyond the thirty (30) day limitation prescribed for filing an application under Order IX Rule 13 CPC.

vi. No specific or sufficient explanation has been offered for this delay in approaching the Court.

vii. Furthermore, the applicant/defendant No. 1 received notice of the execution petition (EX. P. 112/2024) on 20.12.2024.

viii. The following step came only in January 2025, when the applicant/defendant No. 1 claims to have engaged counsel for drafting the present application, indicating a prolonged and unexplained gap between August 2024 and January 2025.

58. In conclusion, while "sufficient cause" for the purposes of Order IX Rule 13 of CPC must be interpreted flexibly, the Court is bound to consider the overall circumstances of each case. Ordinarily, if a defendant approaches the Court promptly within the limitation, and their absence was shown to be *bona fide* and not malafide or intentional, discretion may be exercised. However, in cases where a party is fully aware of the pendency of proceedings, as well as the judgment and decree rendered, and willfully refrains from taking timely legal action, they must bear the consequences of conscious inaction.

59. Furthermore, once a party is represented in a case, it is his/her responsibility to remain apprised of the progress of the matter. In the present era of e-Courts and e-filing systems, where all proceedings are accessible through the Court's website, the applicant/defendant No. 1, being an educated person, had ample opportunity to stay informed. The fact that applicant/defendant No. 1 was aware of the suit and filed his written statement but failed to follow up with the progress of the case until it was too late demonstrates a lack of diligence. Thus, the applicant/defendant No.1 cannot now claim that his absence was in good faith.

60. In light of these considerations, this Court finds that the applicant/defendant No. 1 has failed to establish any "sufficient cause" of his non-appearance. The reasons provided are superficial and unconvincing, pointing instead to a deliberate abandonment of the proceedings. The negligence and lack of *bona fide* efforts on the part of applicant/defendant No. 1 cannot be accepted.

61. Consequently, the application under Order IX Rule 13 CPC, being I.A. 5122/2025, is also liable to be and is accordingly dismissed.

I.A. 5124/2025 (filed by defendant No.1 seeking condonation of delay of 18 days in re-filing I.A. 5122/2025)

I.A. 6121/2025 (filed by defendant No.1 seeking stay of the operation of the judgment and decree dated 01.07.2024 during the pendency of I.A.5122/2025)

62. In view of the order passed in the I.A. 5122/2025 and I.A. 5123/2025, the instant applications have rendered infructuous and, accordingly, stand dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MAY 02, 2025
nc/aks/sph