



2025:DHC:828



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 403/2018, I.A. 39008/2024, I.A. 39009/2024, I.A.
39010/2024 & I.A. 43736/2024
STRIX LTD.Plaintiff

Through: Ms. Anuradha Salhotra, Mr. Anirudh
Bakhru, Ms. Ekta Sarin, Mr. Zeeshan
Khan, Mr. Amit Ranjan and Ms.
Vijay Laxmi Rathi, Advocates
Email: litigation@rahulchaudhry.com

versus

MAHARAJA APPLIANCES LIMITEDDefendant
Through: Mr. Sudhanshu Batra, Mr. Arvind K
Gupta, Mr. Rahul Mangla, Mr.
Abhishnmaet Gupta, and Mr. Arun,
Advocates
Mob: 9899969669
Email: mail@rahulmangla.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

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11.02.2025

MINI PUSHKARNA, J:

**I.A. No. 39008/2024 (Seeking setting aside of *ex-parte* judgment and
decree dated 20th October, 2023)**

**I.A. No. 39009/2024 (Seeking condonation of delay of 110 days in re-
filing the application)**

**I.A. No. 39010/2024 (Seeking condonation of delay of 156 days filing the
application)**



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I.A. 43736/2024 (Seeking stay of execution proceedings before the Trial Court)

1. The present suit was decreed *ex-parte* in favour of the plaintiff and against the defendant vide judgment dated 20th October, 2023, whereby, this Court had awarded damages to the tune of Rs. 50,00,000/- and costs to the tune of Rs. 31,44,925/-, in favour of the plaintiff payable by the defendant, within three months of passing of the decree, failing which, the plaintiff was entitled to recover the said amount along with 7% simple interest from the date of the judgment.

2. *I.A. No. 39008/2024* has been filed by the defendant/ applicant under Order IX Rule 13, read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”), seeking to set aside the *ex-parte* judgement and decree dated 20th October, 2023. Case, as canvassed by the defendant in the present application, is as follows:

2.1 The defendant was unaware about passing of the judgment and decree dated 20th October, 2023 by this Court. The defendant came to know about the same only on 30th November, 2023, upon receipt of a legal notice issued by counsel for the plaintiff.

2.2 The defendant’s earlier counsel, in the absence of any instructions, sought discharge from the matter, as mentioned in order dated 12th August, 2014, and this Court issued notice to the defendant/applicant to inform them of the development.

2.3 The defendant had led evidence during the proceedings, and the matter was subsequently listed in the “Finals” category, as noted in the order dated 21st January, 2015. Despite the case being listed for final hearing, it did not proceed to a conclusion, as the division of Maharaja Whiteline



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Industries Pvt. Ltd., was sold and taken over by M/s SEB Internationale SAS (a French company). As part of the transaction, all staff, including Sh. Sujeet Yadav, who had been handling the litigation, was transferred to the acquiring company. This organizational shift left the defendant unaware of the pendency of these proceedings.

2.4 Upon inspecting the court file, the defendant found that from 2014 until the passing of the decree, the case was at the stage of final arguments, and no explicit *ex-parte* proceedings were ordered against the defendant by this Court. This procedural gap further contributed to the defendant's lack of awareness regarding the case's progress.

2.5 The Commercial Courts Act, 2015, was introduced during this period, and as per the notification issued by this Court, the suit was renumbered as *CS (COMM) No. 403/2018* through the order dated 02nd February, 2018. This administrative change added another layer of complexity, further obscuring the defendant's ability to track the case.

2.6 As per the order dated 22nd March, 2022, notices were issued to the defendant/applicant. However, the Email ID listed on the Ministry of Corporate Affairs (MCA) website belonged to the erstwhile entity, Maharaja Whiteline Industries Pvt. Ltd., and not the current management under M/s SEB Internationale SAS. Thus, it is the case of the defendant/applicant, that it never received the notice, leaving them uninformed about the developments in the matter.

3. *I.A. No. 39010/2024* has been filed by the defendant/ applicant under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 156 days in filing the application, i.e., *I.A. No. 39008/2024* for setting aside the



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ex-parte judgement and decree dated 20th October, 2023. Case, as canvassed by the defendant in the present application, is as follows:

3.1 The defendant had been regularly appearing in the matter and had even cross-examined the witness of the plaintiff. The parties were thereafter in talks of settlement, however, the same failed.

3.2 The defendant's witness could not attend the cross-examination on 21st May, 2014, as the management of the defendant company was transferred to M/s SEB Internationale SAS, which is a French company, resulting in the closure of the defendant's right to lead evidence.

3.3 On 12th August, 2014, the defendant's counsel sought discharge as he was not receiving instructions in the matter. The said request was accepted and the counsel was discharged. However, he was directed to inform the defendant by way of written communication.

3.4 The defendant became aware of the judgement and decree dated 20th October, 2023, only upon receiving a legal notice dated 30th November, 2023, whereby, the suit was decreed against the defendant for Rs. 81,44,925/-.

3.5 Upon learning of the decree, the defendant contacted the previous counsel to retrieve the case papers. After receiving the papers, the defendant filed an inspection application, and the file was provided via the e-inspection portal.

3.6 The defendant's counsel, however, was unavailable from 15th February, 2024, due to personal reasons, as his son was getting married on 27th February, 2024. He resumed work on 04th March, 2024, after the completion of the wedding ceremonies.



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3.7 As per law, the defendant ought to have filed the application under Order IX Rule 13 CPC on or before 19th November, 2023, however, due to the aforesaid circumstances, the application was delayed.

3.8 The present application has been filed with a delay of 156 days, which is neither deliberate nor intentional, but was caused by the circumstances outside the control of the defendant.

4. *I.A. No. 39009/2024* has been filed by the defendant/ applicant seeking condonation of delay of 110 days in re-filing the application, i.e., *I.A. 39008/2024*. Case, as canvassed by the defendant in the present application, is as follows:

4.1 That upon acquiring knowledge of the decree, the application, *I.A. No. 39008/2024*, for setting aside the *ex-parte* judgment and decree, was filed on 25th April, 2024.

4.2 The Registry marked defects in the application on 26th April, 2024, and the same were communicated to the counsel via email. However, the clerk of the counsel, i.e., Sh. Prateek Rana, was unable to address the defects as his mother suffered an accident and required medical treatment, in support of which, the medical documents have been filed.

4.3 During this period, the physical file of the application was misplaced at the Communication Centre, i.e., photocopy shop in the High Court premises. Despite efforts by the counsel in June and July 2024, the file could not be located immediately.

4.4 After Sh. Prateek Rana resumed work following his mother's treatment and surgery on 17th August, 2024, the file was traced, which enabled the counsel to re-file the application.



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4.5 Reliance has been placed on the judgment of Supreme Court in the case of *Collector, Land Acquisition, Anantnag & Anr. Versus Mst. Katiji & Ors., (1987) 2 SCC 107*, to submit that, it has been held that the refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold leading to cause of justice being defeated, while condoning the delay would have decided the case on merits after hearing the parties.

4.6 Further, reliance is placed upon judgment in the case of *Rani Kusum (Smt) Versus Kanchan Devi (Smt) & Ors., (2005) 6 SCC 705*, wherein, it has been held that, all the rules and procedure are the handmaid of justice and courts must interpret procedural provisions flexibly, unless explicitly restricted by statute, to address extraordinary situations and uphold justice.

4.7 The delay of 110 days in re-filing the application was neither deliberate nor intentional but arose due to the circumstances outside the control of the defendant.

5. *I.A. No. 43736/2024* has been filed by the defendant/ applicant under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, seeking a stay on further proceedings in Execution Petition bearing no. *EX. (COMM.) No. 56/2024*, pending before the District Judge (Commercial Court-02), West District, Tis Hazari Courts, Delhi, along with the order dated 09th October, 2024 passed by the District Judge (Commercial Court-02), West District, Tis Hazari Courts, Delhi, till the disposal of *I.A. No. 39008/2024*. Case, as canvassed by the defendant in the present application, is as follows:

5.1 The defendant never received any notice regarding the pendency of the present suit in compliance of the order dated 22nd March, 2022. Great harm and prejudice would be caused to the defendant as decree of damages of Rs. 50,00,000/- has been passed against the defendant.



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5.2. The present application has been filed before this Court upon receipt of notice from the Executing Court. However, the Executing Court is continuing with the execution proceedings, which would render the application filed before this Court for setting aside the *ex-parte* judgment and decree dated 20th October, 2023, infructuous.

Findings and Analysis:

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

7. Initially, this Court issued notice only in the applications, *I.A. 39009/2024* and *I.A. 39010/2024*, seeking condonation of delay in filing and re-filing the application seeking setting aside of *ex-parte* judgment and decree. However, arguments were addressed by the parties comprehensively, including, on the issue regarding setting aside of the *ex-parte* judgment and decree. Therefore, with the consent of the parties, this Court proceeds to decide all the applications filed by the defendant.

8. Perusal of the record shows that interim injunction was granted in favour of the plaintiff in the present proceedings, vide judgment dated 10th September, 2009, and the application of the plaintiff under Order XXXIX Rules 1 and 2, CPC was disposed of.

9. Subsequently, the defendant's evidence was closed vide order dated 21st May, 2014, in the following manner:

“Witness/DWL, who is to be cross examined, is not present and it is stated that since the change of management, this witness has joined some sister concerned of the defendant.”

It is stated that new witness Mr. Shashi Shekhar is present. It is also stated that defendant is ready to settle the matter.

Adjournment is strongly opposed for the reason that defendant is trying to delay the matter and on the last of hearing it was specified that if the witness is not present, evidence of the defendant shall stand



closed and otherwise also there was sufficient time since 19.12.2013 to compromise the matter, if the defendant was so willing.

Submissions made on behalf of the defendant seems to be no plausible as they should not have transferred this witness to sister concerned when the matter is listed for defendant's evidence as last opportunity and otherwise also, if the witness has joined the sister concerned, he can always be asked to come and depose.

It appears that defendant's intention is only to delay the disposal of the matter and despite specific order that no further opportunity shall be granted and despite cost of Rs. 5,000/-, which has not yet been paid though was directed to be paid within 2 weeks. Defendant has not bothered to take steps for settlement as claimed or to file affidavit of the new witness subsequently to transfer of earlier witness. **In facts, defendant's evidence is closed.**

List this matter before the Hon'ble Court on 12th August, 2014 for further directions."

(Emphasis Supplied)

10. Thereafter, when the matter was listed before the Court on 12th August, 2014, counsel for the defendant sought discharge, as he was not receiving instructions. Accordingly, the said counsel was discharged, but was directed to inform the defendant about the said order by way of written communication. Further, court notice was also directed to be issued. The order dated 12th August, 2014, reads as under:

"1. Mr Sushant Singh, learned counsel for the defendant, seeks discharge as he has not been receiving any instructions in the matter.

2. Accordingly, Mr Sushant Singh is discharged from his obligation to appear for the defendant. Mr Sushant Singh will also inform the defendant by way of a communication, as regards the order passed today, which would be sent via registered A.D. and speed post, and copy thereof be placed on record.

3. Learned counsel for the plaintiff says that the evidence of the plaintiff has been completed and that of the defendant stands closed.

4. List on 19.11.2014, in the category of 'short cause'.

5. In the meanwhile, court notice shall issue to the defendant, without insistence on process fee."



11. Pursuant thereto, the said counsel for defendant sent letter to the defendant informing of his discharge from the matter and also communicating the order dated 12th August, 2014. The copy of the letter dated 20th October, 2014 written by the said counsel, along with the original postal receipts have been placed on record before this Court. The letter dated 20th October, 2014, sent through Registered A.D. and Speed Post, by the previous counsel to the defendant, is reproduced as under:

“xxx xxx xxx

Re: CS(OS) No. 1206/2008 titled as Strix Limited Versus Maharaja Appliances Limited.

Sir

*The above said matter was listed on 12th August, 2014 before the Hon'ble Mr. Justice Rajiv Shaktiher. We duly appeared in the matter and the other side has also appeared. **We wish to inform you that I have already been discharged from this case on the aforesaid date and the Hon'ble Court has directed us to inform you about the order dated: 12.08.2014. Please find enclosed herewith the aforesaid order for your perusal. You are requested to kindly collect all the papers from my office, and you will be responsible for all the costs and consequences.***

*Kindly treat this letter as a notice of discharge. Now the matter is coming up on **19.11.2014** before the Hon'ble Court.*

If you require any other assistance in the matter, kindly feel free to contact us.

Very truly yours,

Sushant Singh

Advocate

xxx xxx xxx”

(Emphasis Supplied)

12. Further, the court notice issued to the defendant pursuant to order dated 12th August, 2014 was also duly served, as is evident from the office noting of the Registry of this Court.

13. Thereafter, the present matter kept pending before this Court. Since no one had been appearing on behalf of the defendant, this Court vide order



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dated 22nd March, 2022, directed the Registry to intimate the counsel for the defendant of the order passed by this Court. The plaintiff was also directed to inform the counsel for the defendant. Accordingly, after sending the intimation to the defendant, the plaintiff's counsel filed an affidavit of service to the defendant, which is reproduced as under:

**AFFIDAVIT ATTESTING TO COMPLIANCE OF ORDER DATED
MARCH 22, 2022**

I, Mr. Zeeshan Khan, S/o Murad Khan, aged about 36 years, Indian National, C/O RCY House, C - 235, Defence Colony, New Delhi -110024, do hereby solemnly affirm and declare as under:

1. That I am the counsel for the Plaintiff in the present matter.
2. That, vide Order dated March 22, 2022, this Hon'ble Court instructed the Plaintiff's counsel to inform the Defendant's counsel of the next hearing scheduled in the matter. Considering the Defendant is currently not represented through counsel, we have intimated the Defendant of the hearing scheduled on July 19, 2022 on April 11, 2022 via email at the addressed registered with the Ministry of Corporate Affairs i.e., 'legal@gem.net.in'. The notice was also sent via Registered Post on April 12, 2022. The details of the same have been



tabulated below:

Address of the Defendant	Delivery status of Speed Post	Delivery status of Courier
Maharaja Appliances Limited: 1/7, West Patel Nagar, New Delhi -110008 In	Item delivery confirmed on April 13, 2022	Successfully Delivered on April 12, 2022

3. I confirm that, to the best of my knowledge, the above-mentioned email address is the correct email address. Further, the email was properly sent to the aforesaid email address and the same have not bounced back and in fact been delivered. A copy of the email sent to the Defendant along with its delivery report are annexed hereto as Annexure A, Further, a copy of the notice as sent to the Defendant via Speed Post and Courier along with their receipts and delivery proofs are annexed hereto as Annexure B.

no has Stopped/ presented

DEPONENT



14. Considering the aforesaid, vide order dated 19th July, 2022, this Court noted that the defendant is deemed to be served. Order dated 19th July, 2022, reads as under:

“None appears for the defendant. By the order of this Court dated 22.03.2022, this Court had directed the Registry to issue an intimation to the learned counsel for the defendant of the order passed on that day.

The learned counsel for the plaintiff fairly points out that, vide order of this Court dated 12.08.2014, the counsel who was earlier appearing for the defendant has been discharged. He, however, submits that the plaintiff has informed the defendant of the listing of the present proceedings by way of an email and also by way of speed post and courier, and an affidavit in this regard has been duly filed.

The office report also indicates that notice of the order of this Court dated 22.03.2022 was sent to the defendant, however, the same is not very clear whether the same has been served or not.

Be that as it may be, in view of the affidavit of the plaintiff, the defendant is deemed to be served.

List for hearing on 2nd December, 2022”

(Emphasis Supplied)

15. This Court vide order dated 27th July, 2023, noted that the defendant had stopped appearing in the matter after filing evidence and listed the matter for final hearing. Order dated 27th July, 2023, reads as under:

“1. This hearing has been done through hybrid mode.

2. This matter is for final hearing.

3. The present suit is of the year 2008 and the evidence has been concluded.

4. It is noticed that the Defendant has stopped appearing in the matter after filing evidence.

5. Let the complete physical record be organized and sent to the Court on the next date of hearing. If the Plaintiff wishes to file a note of arguments with judgments, it is permitted to do so.



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6. List on 23rd August, 2023 as Item-1 on Board.”

(Emphasis Supplied)

16. Subsequently, the suit was decreed in favour of the plaintiff, and against the defendant, vide judgment and decree dated 20th October, 2023. The plaintiff, thereafter, sent a letter along with a copy of the decree dated 20th October, 2023 to the defendant, which was delivered to the defendant via Email, Speed Post and courier on 17th November, 2023. The proof of service, with regard thereto, has been duly filed before this Court.

17. The defendant has admitted in Para 2 of its application, I.A. 39008/2024 for setting aside the *ex-parte* judgment and decree, that it received a legal notice from the plaintiff, informing the defendant about the passing of the said *ex-parte* judgment and decree.

18. The Execution Petition, being EX.(COMM) 56/2024 was filed by the plaintiff before the District Court on 28th February, 2024, while the application seeking setting aside of the *ex-parte* judgment and decree came to be filed by the defendant before this Court, only on 25th April, 2024.

19. An *ex-parte* decree against a defendant would be set aside if the defendant satisfies the Court that he was prevented by sufficient cause from appearing when the suit was called for hearing. Elucidating on the concept of sufficient cause, Supreme Court in the case of *Parimal Versus Veena Alias Bharti, 2011 SCC OnLine SC 311*, has held as follows:

“xxx xxx xxx

12. It is evident from the above that an ex parte decree against a defendant has to be set aside if the party satisfies the court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant



had notice of the date and sufficient time to appear in the court. The legislature in its wisdom, made the second proviso mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.

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 Ramlal 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 : AIR 1992 SC 1540] and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [(2010) 5 SCC 459 : (2010) 2 SCC (L&S) 50 : (2010) 2 SCC (Cri) 1291 : (2010) 2 SCC (Civ) 448])

14. In Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] this Court observed that **every good cause is a sufficient cause and must offer an explanation for non-appearance. The only difference between a “good cause” and “sufficient cause” is that the requirement of a good cause is complied with on a lesser degree of proof than that of a “sufficient cause”.** (See also Brij Indar Singh v. Kanshi Ram [(1916-17) 44 IA 218 : AIR 1917 PC 156] , Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] and Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] .)

15 [Ed.: Para 15 corrected vide Official Corrigendum No. F.3/Ed.B.J./14/2011 dated 25-2-2011.]. **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.



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Kameshwar Prasad Singh [(2000) 9 SCC 94 : 2000 SCC (L&S) 845 : AIR 2000 SC 2306] , Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] , Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. [(2002) 3 SCC 156 : AIR 2002 SC 451] , Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] , 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. Anjana Enterprises [(2008) 12 SCC 589 : AIR 2008 SC 2054] .)

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.

xxx xxx xxx”

(Emphasis Supplied)

20. Thus, on the anvil of the law laid down, as aforesaid, this Court has to adjudicate as to whether any sufficient cause has been shown by the defendant in the present case.

21. The defendant’s application, i.e., *I.A. No. 39008/2024* for setting aside *ex-parte* judgment and decree, is primarily on the ground that the defendant was unaware about the pendency of the present suit, as the earlier counsel had sought discharge in the absence of any instructions from the defendant, and that the division of the defendant, Maharaja Whiteline Industries Pvt. Ltd. was sold, after which the entire staff of Maharaja Whiteline Industries Pvt. Ltd., was transferred and taken over by a French company, M/s SEB Internationale SAS. Consequently, the authorised representative of the company, who was looking after the litigation in the present case, had also



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joined the transferee company. However, the record makes it evident that the defendant is not justified in raising these submissions.

22. Perusal of the record shows that when the present matter was listed for cross-examination of witness of the defendant, DW-1, on 21st May, 2014, the said witness was not present. The absence of the said witness was sought to be justified on the ground that on account of change of management, the said witness had joined the sister concern of the defendant. Therefore, it is apparent that even if there was change in the management of the defendant, the defendant was aware of the pendency of the present suit.

23. Besides, the previous counsel who had taken discharge, had duly intimated the defendant about the pendency of the present suit, in terms of the order dated 12th August, 2014. Proof of service with regard thereto, as noted hereinabove, is on record. Further, court notice pursuant to order dated 12th August, 2014, was also sent to the defendant, which was duly served upon the defendant, as per the office noting of the Registry. Defendant has not denied receipt of the letter dated 20th October, 2014 from its previous counsel, which was sent to the defendant's registered address at West Patel Nagar, New Delhi.

24. It is to be noted that defendant was again informed about the pendency of the present suit, when vide order dated 22nd March, 2022, directions were again issued to the plaintiff to inform the defendant about the pendency of the present case. Pursuant thereto, letter dated 11th April, 2022 was issued by the plaintiff to the defendant, which was again sent at the registered address of the defendant at *1/7, West Patel Nagar, New Delhi*. The defendant has not denied receipt of the aforesaid letter from the plaintiff. Further, as noted hereinabove, proof of service of the said letter



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pursuant to order dated 22nd March, 2022, has been duly filed by the plaintiff along with an affidavit, which has been reproduced hereinabove.

25. It is to be noted that the aforesaid is the same address, where the letter dated 17th November, 2023, had been sent by the plaintiff to the defendant informing about the *ex-parte* judgment and decree, and receipt of which, has been duly admitted by the defendant. Thus, the facts on record demonstrate that the defendant was very much aware of the pendency of the present suit, and no sufficient cause has been demonstrated by the defendant which prevented it from appearing before this Court.

26. Under Section 27 of the General Clauses Act, 1897, service of a letter is presumed to be effective if sent to the correct address. Once a letter is properly dispatched by registered post, the burden shifts to the party disputing the delivery to provide contrary proof. (*See: Jain Developers & Others Versus Raja R. Chhabria and others, 2018 SCC OnLine Bom 121, Para 29*). In the present case, the defendant has failed to provide such proof.

27. Thus, the facts on record clearly demonstrate that the defendant was aware about the pendency of the present suit, and still did not take any steps to appear in the present matter. The defendant has undoubtedly been grossly negligent in pursuing the present matter and has sought to advance lame excuses in order to wriggle out of its liability under the decree. The defendant is liable to suffer the consequences of its action, in the absence of any sufficient reason for not appearing before this Court.

28. It is also to be noted that Order XVII Rule 2 and 3 CPC, allows the Court to proceed even in the absence of a party, and make such order as it thinks fit. In the present case, after the evidence on behalf of the plaintiff concluded, no evidence was led by the defendant and it abstained from



participating in the suit proceedings. Thus, while disposing of the present suit, in the judgment and decree dated 20th October, 2023, it is clearly recorded as follows:

“xxx xxx xxx

22. Thereafter, the Defendant’s Counsel sought discharge and the Defendant was proceeded ex parte. In effect therefore, there has been no evidence that has been led, on behalf of the Defendant.

23. Accordingly, this Court shall proceed to decide the issues that have been framed on the basis of the pleadings and the evidence on record.

xxx xxx xxx”

(Emphasis Supplied)

29. Since the defendant stopped participating in the proceedings before this Court, and did not cause appearance despite service, the Court proceeded in the defendant’s absence, and listed the matter for hearing. The absence of the term “*ex-parte*” does not negate the fact that the Court indeed proceeded with the suit proceedings in the defendant’s absence. This fact is further fortified by the order dated 02nd December, 2022, wherein, the Court specifically noted that the defendant is already proceeded *ex-parte*, though no formal order in that regard had been passed earlier.

30. Mere fact that in the order dated 19th July, 2022, it is not specifically recorded that the defendant is proceeded *ex-parte*, does not alter the position that the Court ordered the matter to be proceeded in the absence of the defendant. It is also to be noted that vide order dated 27th July, 2023, it was categorically recorded by this Court that the defendant had stopped appearing in the matter after filing evidence. After recording the same, the Court proceeded to list the matter for final hearing. Therefore, for all intent and purposes, the defendant had been proceeded *ex-parte*, though the same



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was not explicitly so recorded. Consequently, it is held that the defendant's claims, regarding non-compliance with procedural requirements, are without any merit.

31. Even when no formal order has been passed by the Court for proceeding *ex-parte*, the fact that the Court proceeded with the matter and decided the same on the basis of pleadings and evidence on record, in the absence of the defendant, clearly establishes that the defendant was in fact proceeded with *ex-parte*. Holding that whether a decree is *ex-parte* or not, can be decided from the attendant circumstances, though formal order in that regard may not have been made, the Bombay High Court in the case of *Balu @ Madhavrao Shankarrao Ghorpade since deceased by his LRs. Ajay Madhavrao Ghorpade and others Versus Radhakkabai Panditrao Ghorpade and others, 2003 SCC OnLine Bom 739*, has held as follows:

“xxx xxx xxx

21. Mr. Bandiwadekar also argued that assuming that the court can pass an ex parte order by falling back on Order IX, Rule 6(1)(a), it has to make an order that the suit be heard ex parte. He submitted that inasmuch as the words ‘make an order that the suit be heard ex parte’ are added by amendment, this requirement is mandatory. In this connection he relied on Rambrish's case (supra) and submitted that since no formal order was made, the judgment and decree in question cannot be called ex parte.

xxx xxx xxx

25. Order IX, Rule 7 provides that where the court adjourns the hearing of the suit *ex parte*, the defendant can appear on or before such date, assign good cause for his non-appearance, and the court may hear him on payment of costs or otherwise. All this leads me to conclude that, if the defendant does not appear though duly served, the court should have evidence before it to indicate that, if such evidence is not controverted, the plaintiff would be entitled to a decree. Therefore, the *ex parte* decree cannot be passed in undue haste. Though Order VI, Rule 1(a) does not state that on the very day on which the defendant does not appear, the court cannot pass an *ex*



*parte decree, the hearing of the suit, in a given case, will have to be adjourned for ex parte decree, so that the plaintiff can adduce evidence and on that uncontroverted evidence, the court can pass an ex parte decree. **I am unable to agree with Mr. Bandiwadekar that, if formal order that suit shall be proceeded ex parte is not made, the decree cannot be ex parte. Whether the decree is ex parte or not can be decided from the other attendant circumstances also. In my opinion, reliance placed by Mr. Bandiwadekar on Rambrish's case (supra) is totally misplaced.***

26. In Rambrish's case (supra) on the relevant day defendant 1 was present. Examination-in-chief of plaintiff's witness was concluded. No oral evidence was led by defendant 1. Second defendant and his advocate were absent. No written statement was filed and that day itself judgment was passed. The 2nd defendant applied for setting aside of that judgment. The trial Court rejected the application. He filed Civil Revision Application in the High Court. The High Court considered Order VIII, Rule 5(2) which says that, if the defendant has not filed a pleading it shall be lawful for the court to proceed to pronounce judgment on the basis of the facts contained in the plaint but the court may in its discretion require that any fact may be proved. The court was not considering provisions of Order XVII, Rules 2 and 3. Moreover the judgment was passed on the same day. It is in these circumstances that the court held that the formal order of the court to proceed ex parte was not made and the decree was not ex parte.

*27. In this case on 19-7-1986 plaintiff's evidence was recorded and the case was adjourned to 21-7-1986. On 21-7-1986 the court resumed hearing. The plaintiff's advocate produced some more documents and the decree was passed on the uncontroverted evidence of the plaintiff. **Though formal order does not appear to have been made all other conditions are satisfied. The judgment and order therefore, is ex parte.***

xxx xxx xxx”

(Emphasis Supplied)

32. Likewise, the Rajasthan High Court in the case of ***Prahlad Das Versus Karunaram & Anr., 1998 SCC OnLine Raj 143***, has held as follows:

“xxx xxx xxx

6. So far as question of recalling of witnesses is concerned, it is the discretion of the Court given to it under Order 18 Rule 17 CPC which



*provides that the Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit. The word used “may” indicates that the discretion has been given to the trial Court. The word “may” used does not mean “shall” and the Court was not bound to recall the witnesses whom the petitioner wanted to recall. The case of the petitioner himself is that he had engaged a counsel some time in the year 1991 but he did not appear and ultimately on 31.7.93 the defence of the petitioner was closed. There is nothing on record as to when did the petitioner contact his advocate in between 29.4.91 to August, 1995. It is found from the record that when Karunaram and his two witnesses were examined by the learned District Judge, proper opportunities were given to the opposite parties who were present to cross examine the witnesses. But when the petitioner or his counsel were not present they did not and could not have cross examined these witnesses. **It was submitted that a formal order of ex parte proceedings was not passed against the petitioner. In my view it hardly matters. Now to say that petitions may be given opportunity to cross examine the witnesses after recalling them will amount injustice to other party. The law helps those who do not sleep. The petitioner has been sleeping over the matter for the reasons best known to him.***

xxx xxx xxx”

(Emphasis Supplied)

33. As is apparent from the facts and circumstances and proceedings in the present case, the defendant had been proceeded *ex-parte* and the Court accordingly proceeded to decide the matter in accordance with law, on the basis of material before it, in the absence of the defendant.

34. The judgment of the Supreme Court in the case of *Dwarika Prasad (D) thr. LRs Versus Prithvi Raj Singh, 2024 SCC OnLine SC 3828*, as relied upon by the defendant, is clearly distinguishable and is not applicable to the facts and circumstances of the present case. In the said case, the appellant therein was an illiterate and old aged person, who was unable to understand court proceedings. He was not made aware of the *ex-parte* decree passed by the Trial Court by his previous counsel. It was only after



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appointment of a new counsel that the appellant in the said case, got to know about the *ex-parte* decree passed against him, after which he immediately filed an application for restoration of the suit. It is in these circumstances, the Supreme Court restored the order of the learned Trial Court which had allowed restoration of the suit, thereby setting aside the *ex-parte* decree, as the appellant therein, was found to have acted *bonafide* and diligently.

35. However, in the present case, the defendant is a registered company, and not any uneducated or naive person. The defendant was aware of the ongoing proceedings and had been duly intimated about the present proceedings by the previous counsel, as well as the plaintiff's counsel. Besides, notice issued by the court to the defendant on one of the occasions, was also duly served. Yet, the defendant chose not to appear during the pendency of the suit proceedings. The conduct of the defendant in the present case cannot be said to be *bonafide* and the defendant has failed to show any sufficient cause for setting aside the *ex-parte* judgment and decree. The defendant has clearly been negligent and indolent in the present case.

36. It is to be noted that the defendant is not a rustic illiterate person but a registered company, who had been actively participating in this case. Thus, it cannot shift blame to its previous counsel. Holding that a company which is managed by educated persons, who know very well where their interest lies, is liable to bear the consequences if it does not pursue its case diligently, this Court in the case of *Moddus Media Pvt. Ltd. Versus M/s Scone Exhibition Pvt. Ltd.*, 2017 SCC OnLine Del 8491, has held as follows:

“xxx xxx xxx



13. *The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. **The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences.***

xxx xxx xxx”

(Emphasis Supplied)

37. The present is a commercial suit, wherein, the yardstick for condoning delay is strict. While dealing with an application for condonation of delay, the court examines whether a party has acted diligently and without negligence, ensuring that no undue advantage is extended in contravention of the procedural mandate of the Commercial Courts Act, 2015. Only in a fit case, where a party has acted *bonafide* and not in a negligent manner, a short delay can be condoned. Thus, holding that in cases arising out of The Commercial Courts Act, 2015, condonation can be granted only in exceptional circumstances and not as a matter of rule, Supreme Court in the case of ***Govt. of Maharashtra (Water Resources Department) Represented***



by Executive Engineer Versus Borse Brothers Engineers and Contractors Private Limited, 2021 SCC OnLine SC 233, has held as follows:

“xxx xxx xxx

58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in Basawaraj v. LAO [Basawaraj v. LAO, (2013) 14 SCC 81] , has held : (SCC pp. 85-88, paras 9-15)

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the 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, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have 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 it cannot be alleged that the party has “not acted diligently” or “remained 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. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land & Building Corpn. v. Bhutnath Banerjee [Manindra Land & Building Corpn. v. Bhutnath Banerjee, AIR 1964 SC 1336] , Mata Din v. A. Narayanan [Mata Din v. A. Narayanan, (1969) 2 SCC 770] , Parimal v. Veena [Parimal v. Veena, (2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [Maniben



Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24] .

10. *In Arjun Singh v. Mohindra Kumar [Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993] this Court explained the difference between a “good cause” and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”.*

11. *The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only [Ed. : The matter between two asterisks has been emphasised in original.] so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned [Ed. : The matter between two asterisks has been emphasised in original.] , whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [Madanlal v. Shyamlal, (2002) 1 SCC 535] and Ram Nath Sao v. Gobardhan Sao [Ram Nath Sao v. Gobardhan Sao, (2002) 3 SCC 195].)*

12. **It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. ‘A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.’ The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.**

13. **The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, Para 605 p. 266:**



'605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.'

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.
(See *Popat & Kotecha Property v. SBI Staff Assn.* [*Popat & Kotecha Property v. SBI Staff Assn.*, (2005) 7 SCC 510], *Rajender Singh v. Santa Singh* [*Rajender Singh v. Santa Singh*, (1973) 2 SCC 705] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [*Pundlik Jalam Patil v. Jalgaon Medium Project*, (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907].)

14. In *P. Ramachandra Rao v. State of Karnataka* [*P. Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578 : 2002 SCC (Cri) 830] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [*Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225 : 1992 SCC (Cri) 93].

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. **In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever.** The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. **In case there was no sufficient cause to prevent a litigant to approach the court on time**



condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

(emphasis supplied)

xxx xxx xxx

63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.

xxx xxx xxx”

(Emphasis Supplied)

38. Thus, from the aforesaid, it is manifest that strict adherence to the aforesaid principles have to be ensured in the present case. Being a commercial matter involving patent infringement, timely resolution of disputes is the cornerstone of the Commercial Courts framework.

39. In the present case, the defendant’s application under Order IX Rule 13 CPC is delayed by 156 days, as admitted in Para 12 of *I.A. No. 39010/2024*. This delay exceeds the limitation period by more than five times, making it grossly disproportionate and clearly outside the bounds of what can be considered a “short” delay. The only reason advanced is the absence of the counsel from 15th February, 2024 to 04th March, 2024, due to a family wedding. However, it is pertinent to note that the defendant admitted to having knowledge of the decree on 30th November, 2023, as stated in Para 7 of the application. Despite this, the application under Order



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IX Rule 13 CPC was filed only on 25th April, 2024. The defendant has clearly failed to provide substantial grounds to justify this delay and such negligence demonstrates a lack of diligence on the defendant's part.

40. It is further to be noted that the initial 156 days' delay is further compounded by an additional 110 days' delay in re-filing the application after objections were raised by the Registry on 26th April, 2024. As per procedural norms, the defendant had 30 days to cure the defects and re-file the application, with the deadline expiring on 26th May, 2024. However, the defendant re-filed the application only after 110 days beyond the limitation period. The justification provided by the defendant for this delay is the alleged accident of the clerk's mother on 07th June, 2024, resulting in her hospitalization. However, medical records submitted by the defendant show that the accident occurred well after the 30 days period for curing objections had already expired. Thus, this timeline renders the defendant's explanation baseless and indicative of an afterthought to excuse their non-compliance.

41. The defendant's repeated lapses, including, the delay in filing the initial application and the subsequent delay in re-filing, reflect a pattern of negligence and lack of *bona fide* conduct. The defendant was aware of the proceedings and yet failed to act promptly or provide a coherent explanation for such significant delays. It is needless to state that The Commercial Courts Act, 2015 was enacted to expedite the resolution of commercial disputes and this Court will not condone such gross negligence that undermines its intent.

42. In view of the above, the defendant's conduct demonstrates a complete lack of diligence and *bona fides*. The cumulative delay of 266 days, without sufficient cause, falls far outside the permissible bounds of



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delay under The Commercial Courts Act, 2015. Therefore, the applications for condonation of delay are without any merit.

43. The facts and record of the present case make it evident that no sufficient cause has been shown by the defendant for setting aside the *ex-parte* judgment and decree dated 20th October, 2023. Further, the defendant has also failed to satisfactorily explain the delay in filing the application for setting aside the said *ex-parte* judgment and decree. Thus, this Court is not inclined to accept the submissions advanced by the defendant.

44. Accordingly, applications, *I.A. 39008/2024*, *I.A. 39009/2024* and *I.A. 39010/2024*, are dismissed, as devoid of any merits.

45. On account of the dismissal of the aforesaid applications, the Executing Court is at liberty to proceed with the execution pending before it, as per law. Consequently, application, *I.A. No. 43736/2024*, seeking stay of the execution proceedings before the Trial Court, is also dismissed.

**(MINI PUSHKARNA)
JUDGE**

FEBRUARY 11, 2025

Ak/Kr/Au