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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 05th August, 2025*

+ CM(M) 997/2021 & CM APPL. 39831/2021

VIRENDER KUMAR

.....Petitioner

Through: Mr. Savinder Singh and Ms. Barnali
Mukherjee, Advocates

versus

ASHOK KUMAR BAJAJ

.....Respondent

Through: Mr. Pradeep Parihaar, Advocate
(Through VC)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner has challenged order dated 12.10.2021 passed by learned First Appellate Court whereby his appeal has been dismissed on the point of limitation.
2. Let me narrate some relevant facts.
3. A suit was filed against the petitioner herein, which was decreed, *ex parte*, *vide* order dated 15.07.2016.
4. Stand of the petitioner (defendant before the learned Trial Court) is to the effect that he was never served with the summons and, therefore, the decree was passed behind his back, which violated the principles of natural justice. He, accordingly, filed an application under Order IX Rule 13 CPC.
5. When the aforesaid application was taken up by the learned Civil Judge, North-West, Rohini Courts, it took note of the fact that he learnt about the *ex parte* decree in question on 28.10.2017, when he had received “warrants of attachment” wherein he even stated to the *Bailiff* that he would settle the matter before the next date of hearing.



6. Fact remains that application under Order IX Rule 13 CPC was filed by him on 23.02.2018, which was beyond the period of limitation.
7. Learned Trial Court, keeping in mind the aforesaid delay which according to learned Trial Court had not been explained satisfactorily, refused to condone the delay and, resultantly, the application filed by the defendant under Section 5 of Limitation Act was dismissed and, consequently, application moved under Order IX Rule 13 CPC was also dismissed, without touching its merits.
8. Such order is dated 04.11.2019.
9. Since the petitioner was unsuccessful, it was expected that if he was desirous of filing any appeal, he would be quick in filing the same.
10. He learnt about the dismissal of his application moved under Order IX Rule 13 CPC on 04.11.2019 but despite that he, in an apparently careless manner, lodged appeal before the learned First Appellate Court as late as on 15.06.2020.
11. Learned First Appellate Court took note of the fact that there was delay in lodging appeal which had not been properly explained. It observed that the period of limitation for filing any such appeal was 30 days in terms of Section 116 of Limitation Act and there was no justifiable reason as to why appeal was filed in June, 2020.
12. This Court is cognizant of the fact that the pandemic of Covid-19 had set in last week of March, 2020 but herein, the application moved by the petitioner under Order IX Rule 13 CPC was dismissed on 04.11.2019. For the reasons best known to the petitioner, he applied for the certified copy of such order only on 04.02.2020, which clearly smacks of complete inaction on his part.



13. It was in the aforesaid backdrop that learned First Appellate Court was compelled to see whether the appellant had been able to show sufficient cause for condonation of delay or not. After taking note of the vital aspects of the case and while referring to certain judgments and precedents on the point involved, it came to the conclusion that the delay had not been properly explained and that the appellant had failed to show any sufficient cause to condone the delay. Resultantly, application moved by appellant under Section 5 of Limitation Act has been dismissed and, consequently, his appeal has also been dismissed, *albeit*, not on merits.

14. Such order is under challenge.

15. The aforesaid facts would, clearly, indicate the casual manner with which the petitioner is taking the things despite the fact that there is an *ex parte* decree against him.

16. Not only does he approach the Court belatedly after learning about the *ex parte* decree and when his application filed under Order IX Rule 13 CPC is also dismissed on technical ground, he does not take such dismissal seriously enough.

17. Application, as already noticed above, was dismissed on 04.11.2019 and he applies for certifies copy as late as on 04.02.2020, when the period of limitation for filing appeal had already expired.

18. As already noticed above, he had filed his application under Order IX Rule 13 CPC on 23.02.2018 which was, eventually, dismissed after more than one and half year. If at all, he was of the view that certain certified copies of the relevant documents/service report were required in appeal, there was no one to prevent him to have applied for those certified copies at the earliest opportunity when he was pursuing his application under Order IX Rule 13



CPC. Even otherwise, these copies would have proved handy for him when he was to address arguments on his application moved under Order IX Rule 13 CPC.

19. Learned counsel for petitioner, however, submits that the previous conducting counsel of the petitioner kept him in dark and did not take requisite step though he divulged that the aforesaid application had been dismissed in the month of November, 2019. According to petitioner, his previous counsel also assured him not to worry about and that no adverse orders would be passed against him. Petitioner believed all such assurances of his previous counsel. It is contended that thereafter, petitioner had undergone mental trauma and his son also cross-checked the development from the previous counsel but he was also assured in the similar manner. This went on till February, 2020 and it was only thereafter that the petitioner was compelled to change his counsel and filed the aforesaid application seeking condonation of delay of around 195 days.

20. There is growing trend to pass on the buck to the previous counsel with the expectation that in the process, the Court would shower some sympathy. However, it is not appropriate to condemn and castigate the previous counsel in a blatant manner. Reference be made to *Rahul Mavai vs. Union of India and Others: 2024 SCC OnLine Del 9050* wherein this Court while disapproving the practice of shifting the burden of negligence on the shoulder of the counsel observed that a litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.

21. Therefore, quite evidently, delay in lodging the appeal has not been satisfactorily explained and, therefore, the learned First Appellate Court could not even touch the merits of the case.



22. Learned First Appellate Court made reference to *Baswaraj and Another vs. Special Land Acquisition Officer: (2013) 14 SCC 81*, wherein the Hon'ble Supreme Court has observed as under: -

“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 bonafide on his part in the facts & 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.”

23. Moreover, this Court is also conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India and supervisory powers need to be invoked when there is some illegality or perversity in the impugned order.

24. The learned First Appellate Court, on careful perusal of the entire matter, came to the conclusion that delay had not been properly explained and keeping in mind the conduct of the appellant, it refused to condone the delay. Such discretionary exercise of the power does not look to be arbitrary from any angle whatsoever, necessitating any interference by this Court.

25. Resultantly, the present petition is hereby dismissed.

26. Pending application also stands disposed of in aforesaid terms.

**(MANOJ JAIN)
JUDGE**

AUGUST 5, 2025/dr/shs