



2026:DHC:8010



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

Reserved on: 01.09.2026
Date of Decision: 18.09.2026
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CNR No. DLHC010382692026

+ CM(M) 1819/2026, CM APPL. 55072/2026 & CM APPL.
55073/2026

RISHI RAJ SHARMA

.....Petitioner

Through: Mr. S.K. Kalra, Ms. Mradul
Sharma, Ms. Sweta Kashyap
and Mr. Mohit Singh, Advs.

versus

RAMESH LATA

.....Respondent

Through: Ms. Veena Goswami, Adv.
(through VC)

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. By way of the present petition, the petitioner is assailing the order dated 30.07.2026 passed by the learned District Judge-03 (South District), Saket Courts, New Delhi¹, in CS DJ 411/2025 titled '*Ramesh Lata v. Rishi Raj Sharma*', whereby the learned Trial Court dismissed petitioner's applications, one under Order XXXVII Rule 3(7) of the Code of Civil Procedure, 1908² seeking condonation of three days' delay in entering appearance, and another under Section 151 CPC seeking recall of order 04.12.2025, whereby the learned Trial Court

¹ hereinafter 'Trial Court'

² hereinafter 'CPC'



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held the respondent entitled to judgment in the underlying suit in terms of Order XXXVII Rule 2(3) CPC.

2. Succinctly put, the brief facts concerning the present petition are that the respondent/plaintiff instituted a summary suit, under Order XXXVII CPC, being CS DJ 411/2025, seeking recovery of rent arrears amounting to Rs.5,24,667/-, along with interest at 18% *per annum*, against the petitioner.

3. Thereafter, on 28.07.2025, the learned Trial Court directed issuance of summons to the petitioner through all permissible modes, and directed the respondent to supply the copies of the plaint and related documents, along with the summons, within a period of one week.

4. On the next date of hearing dated 09.10.2025, the learned Trial Court recorded the statement of respondent counsel that although the memo of appearance and *vakalatnama* had been filed on behalf of the petitioner, copy of the same had not been supplied to the respondent. On that date, the respondent sought time to move an appropriate application seeking issuance of summons for judgment.

5. The respondent's application, filed under Order XXXVII read with Section 151 CPC seeking a summary judgement, thereafter came up for consideration on 04.12.2025, whereby the learned Trial Court disposed of the application holding that the respondent is entitled to a decree under Order XXXVII Rule 2(3) CPC. Relevant portion of the learned Trial Court's order dated 04.12.2025 is produced below:

“An application under Order XXXVII read with Section 151 CPC seeking passing of the decree in the present suit, has been filed.

None has appeared on behalf of the defendant.



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It is stated in the application that summons of the suit under Order XXXVII CPC were served upon the defendant on 13.08.2025 and memo of appearance on behalf of the plaintiff filed online on 26.08.2025 and physically on 28.08.2025 (wrongly quoted as 26.10.2025 and 28.10.2025). The appearance has not been entered within the prescribed period of 10 days as mentioned under Order XXXVII Rule 3 CPC. Even copy of memo of appearance was not given to the plaintiff/ plaintiff's advocate as mandated by Order XXXVII Rule 3 CPC. There is no application filed under the relevant provision showing sufficient cause for excuse the delay in entering the appearance.

In view of the above, thus, there is a default in entering of appearance as per mandate of provisions under Order XXXVII Rule 3 CPC and therefore, the plaintiff is entitled to judgment in terms of Order XXXVII Rule 2(3) CPC. Application stands disposed off in the said terms.

Put up for clarification, if any/ judgment on 10.02.2026.”

6. In the *interregnum*, the petitioner moved two applications on his behalf, one under Section 151 CPC, seeking recall of the order dated 04.12.2025, and another under Order XXXVII Rule 3(7) CPC, seeking condonation of the delay of three days in entering appearance.

7. Subsequently, on 10.02.2026, the learned Trial Court noted that the said applications, having been e-filed on 05.02.2026, were served upon the respondent only on 09.02.2026. Considering that no reasonable explanation for the aforesaid delay was furnished by the petitioner, and the said delay caused further adjournment in adjudication of petitioner's applications, the learned Trial Court imposed a cost of Rs.3,000/- upon the petitioner, payable to the respondent within one week.

8. On 21.04.2026, the learned Trial Court recorded that the cost of Rs.3,000/- had been paid by the petitioner to the respondent, and the



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matter was thereafter listed for arguments on the petitioner's pending applications on 30.07.2026.

9. The said applications were opposed and, after hearing both parties, came to be dismissed by the learned Trial Court *vide* order dated 30.07.2026. The relevant portion of the order is reproduced hereinbelow:

“7. As per record, summons of the suit u/o 37 CPC were served on the defendant on 13.08.2025 and memo of appearance was e-filed on 26.08.2025 and physically filed on 28.08.2025. However, notice of the such appearance (by way of supply of copy of the memo of appearance) was not given to the plaintiff as mandated by Order 37 Rule 3(3) CPC. The appearance was also not entered within the statutory period of 10 days. There was delay of 3 days in entering the appearance and the memo of appearance was filed without any application seeking condonation of delay in entering the appearance. It is further noted that after entering appearance by filing memo of appearance on 26.08.2025, matter was listed on 09.10.2025. None appeared on behalf of the defendant on said date. Even on the subsequent date i.e. 04.12.2025, none appeared on behalf of the defendant. On the said date, this court after noting the series of the aforesaid events, held that plaintiff is entitled to judgment in terms of Order 37 Rule 2(3) CPC.

8. It is to be noted that in the applications at hand, defendant averred that he came to know of the order passed on 04.12.2025 in December, 2025 itself. No specifics have been mentioned with regard to how and when he came to know about the said order. It appears that the proceedings in the present suit were being watched with no participation or diligence on the part of the defendant, with the objective of delaying the present proceedings. It is further noted that, the present applications were e-filed on 05.02.2026 but the copy of the same was served on the plaintiff's side in the evening of 09.02.2026. With regard to the filing of the said applications, there is also lack of promptness on the part of the defendant.

9. Defendant has averred his medical condition for the delay occasioned in entering the appearance. Perusal of the medical documents annexed with the application shows that same are



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pertaining to May, 2024. However, there are no medical documents showing further follow up or medical opinion on the alleged medical condition. No medical document has been shown for the period contemporaneous with the period during which the appearance was entered and subsequently, when none appeared on behalf of the defendant on the dates fixed.

10. In view of the above, this court is of the considered view that no indulgence is warranted for this court to recall the order dt.04.12.2025 and to condone the delay in entering the appearance. Accordingly, applications at hand are dismissed.

11. Put up for clarifications on 20.08.2026.”

10. Aggrieved thereby, the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Indian Constitution.

11. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court declined the petitioner’s plea seeking condonation of the delay of three days in entering appearance in respondent’s summary suit, without weighing the brevity of the delay of only three days against the severity of the consequence of the petitioner being permanently shut out from contesting the respondent’s suit on merits.

12. The petitioner placed reliance on the judgment of this Court in ***Babu Lal Yadav v. M/s R.S. Yadav & Co. and Anr³***, whereby it was held that condonation of delay in entering appearance under Order XXXVII CPC remains a matter of judicial discretion. Section 5 of the Limitation Act, 1963 does not restrict that discretion to any particular length of delay, and what remains to be examined is the sufficiency of the explanation offered for the delay, and not the duration of the default.



13. The learned counsel brought notice of this Court to para 14 of the said judgment, which is reproduced below:

“**14.** It is trite that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act, 1963 does not prescribe that such a discretion can be exercised by the Court only if the delay is for a certain period of time, rather the length of delay is hardly relevant. What is to be considered is the explanation offered for the delay. Thus each case has to be examined in its own facts and as long as there is a satisfactory explanation offered for the delay, the Court is well within its powers to accept the explanation and condone the delay. Merely because the title of the application does not reflect the correct position of law, can also not be a ground to oust a party. What has to be examined is the explanation offered in the application and the relief sought. In other words, substantial justice cannot be permitted to be sacrificed at the altar of technicalities. In the case of *N.Balakrishnan Vs. M.Krishnamurthy* reported as (1998) 7 SCC 123, the Supreme Court relying on its earlier decisions in the case of *Shakuntala Devi Jain Vs. Kuntal Kumari* reported as (1969) 1 SCR 1006 and *State of West Bengal Vs. Administrator, Howrah Municipality* reported as (1972) 1 SCC 366, held that the words” sufficient cause” as mentioned in Section 5 of the Limitation Act, 1963 ought to receive a liberal construction so as to advance substantial justice for ‘court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause’. It was further observed that “it must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of dilatory strategy, the Court must show utmost consideration to the suitor”.”

14. Learned counsel further submitted that the learned Trial Court failed to take into consideration that the delay of three days in entering appearance was itself explained by a genuine misunderstanding between the petitioner and his erstwhile counsel. The petitioner, being

³ 2010 SCC OnLine Del 789



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of advanced age and suffering from hypertension and diffuse cerebral atrophy, a condition affecting memory, since May 2024, believed in good faith that summons had been served on him on 18.08.2025, and informed his counsel accordingly, upon engaging him on 23.08.2025. Acting on this belief, the memo of appearance was e-filed on 26.08.2025 and physically filed on 28.08.2025, after a delay of three days beyond the prescribed ten-day period triggering from the actual date of service i.e., 13.08.2025. No application for condonation was filed at that stage, since his counsel believed appearance had been entered in time. It is submitted that the true date of service came to light only when the petitioner, having received no summons for judgment despite a long wait, inspected the case file and discovered that the learned Trial Court had, by order dated 04.12.2025, already held the respondent entitled to judgment under Order XXXVII Rule 2(3) CPC.

15. Learned counsel while placing reliance on the judgments of *The State of West Bengal v. The Administrator, Howrah Municipality and Ors.*⁴, *Hector M. Mehta v. CRB Capital Markets Ltd.*⁵, and *Arjan Lal Verma v. Smt. Rawel Kaur*⁶, urged that a *bona fide* lapse on the part of the petitioner unfamiliar with the technicalities of a summary suit, barring any imputation of *mala fides* or dilatory intent, satisfies the criteria of ‘sufficient cause’, as prescribed under the provision of Order XXXVII Rule 3(7) CPC.

16. *Per contra*, learned counsel appearing on behalf of the respondent opposed the contentions of the petitioner and submitted

⁴ (1972) 1 SCC 366

⁵ 98(2002) DLT 127

⁶ AIR 1982 DELHI 148



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that petitioner's reliance on the judgment of **Babu Lal Yadav** (*Supra*) is misplaced since that case proceeded squarely on the footing that no *mala fides* or dilatory intent could be attributed to the respondent therein. Here, it is submitted that the *mala fides* has been expressly pleaded, both in respect of the non-service of the memo of appearance and in respect of the petitioner's conduct after entering appearance, when he did not participate in the proceedings on 09.10.2025 or 04.12.2025 despite having received the complete case files by email as early as 06.08.2025, even before formal service of summons on 13.08.2025.

17. Learned counsel submitted that the judgment of **Howrah Municipality** (*Supra*) is clearly distinguishable from the facts of the present case because in the said case, the Hon'ble Supreme Court identified that the impugned order therein neither scrutinised the explanation offered for the delay nor recorded any finding disbelieving it. Whereas, in the present case the impugned order dated 30.07.2026 records specific reasons for dismissal of petitioner's applications. The learned Trial Court recorded that the medical documents relied upon by the petitioner are dated May 2024 and are unaccompanied by any clinical opinion, follow-up, or contemporaneous record for the relevant period, that no explanation was furnished for the three-day delay in entering appearance itself, and that the applications for recall and condonation were themselves filed and served with further, unexplained delay.

18. This Court has considered the rival submissions and has perused the material on record.

19. The question that arises for consideration before this Court is



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whether, at this juncture where the learned Trial Court has fixed the matter for pronouncement of judgment, the petitioner can be permitted to contest respondent's summary suit on merits despite a delay of three days in entering his appearance in the suit.

20. In the present case, the petitioner seeks condonation of delay of three days in entering appearance, under Order XXXVII Rule 3(7) CPC and to recall the order 04.12.2025, whereby the learned Trial Court had held the respondent entitled to judgment in terms of Order XXXVII Rule 2(3) CPC, on the basis that there is clear default in entering of appearance by the petitioner as per mandate of provisions under Order XXXVII Rule 3 CPC.

21. It is the observation of this Court that the judgments put forth by the petitioner advances his submissions, to the effect that while sub-section (1) of Order XXXVII Rule 3 CPC prescribes that the defendant of the suit must (a) enter an appearance either in person or by pleader and, (b) he must file in Court, an address for service of notices on him, within a period of ten days from the date of service of summons, it is held in catena of judgments of this Court and the Hon'ble Supreme Court that interpretation of 'sufficient cause', as prescribed under Section 5 of the Limitation Act, 1963, and by extension Order XXXVII Rule 3(7), ought to be liberal to serve the ends of substantial justice.

22. Similarly, in the judgment of this Court in **Hector M. Mehta** (*Supra*), as relied upon the petitioner, similar position of law was expounded by this Court, while following the Hon'ble Supreme Court's decision in **N. Balakrishnan v. M. Krishnamurthy**⁷, and it

⁷ (1998) 7 SCC 123



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was held that the expression ‘sufficient cause’ under Order XXXVII Rule 3(7) CPC must be liberally construed to advance substantial justice in so far as the length of delay is immaterial to the process of adjudication of a condonation of delay application, the acceptability of the explanation alone remains the relevant criterion along with the determination that delay is not to be presumed to be deliberate. Relevant para of the said judgment is reproduced hereinbelow for ready reference:

“4. As per the provisions of Order XXXII Rule 3 Sub-rule (7) CPC, the Court may excuse the delay in entering appearance for sufficient cause shown by the defendant. The words "sufficient cause" though have not been defined but have been interpreted by the Supreme Court in a catena of judgments in reference to Section 5 of the Limitation Act. It is held in a number of judicial pronouncements that the words "sufficient cause" should be liberally construed so as to advance substantial justice. The Supreme Court in (1998) 7 SCC 123, N. Balakrishnan v. M. Krishnamurthy, held that in the absence of anything showing malafides or deliberate delay as a dilatory tactic, Court should normally condone the delay. It has also been held that length of delay is not material, acceptability of the explanation is the only criterion as sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is found satisfactory. It is held that there is no presumption that delay in approaching the Court is always deliberate.”

23. Upon the aforesaid consideration, this Court is unable to accept the respondent’s contention that the judgment in **Babu Lal Yadav** (*Supra*) stands wholly displaced by the plea of *mala fides* raised in the present case. The *mala fides* pleaded by the respondent relate principally to two distinct grounds of petitioner’s conduct, namely the non-service of the memo of appearance and the petitioner’s



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subsequent non-participation on 09.10.2025 and 04.12.2025. Neither of the aforesaid grounds, in this Court's view, deals directly with the *bona fides* of the three-day delay in entering appearance itself, which is the specific default for which condonation has been sought under Order XXXVII Rule 3(7) CPC. The two grounds, though arising from a common sequence of events, remain wholly separate. A finding of laxity in later conduct of the petitioner does not retrospectively convert an initial delay of three days into a *mala fide* one.

24. As regards the explanation offered by the petitioner for the delay, namely the miscommunication as to the date of service, this Court finds no material on record to suggest that the said explanation was advanced with any dilatory intention. Confusion between the date of service being 13.08.2025 or 18.08.2025 is not, on its face, an implausible error for a litigant unfamiliar with the procedure laid down in Order XXXVII CPC. The observations of this Court in **Babu Lal Yadav (Supra)**, drawing upon **Hector M. Mehta (Supra)**, are instructive in this regard.

25. This Court is also mindful that the delay sought to be condoned is of three days only. As held in **Babu Lal Yadav (Supra)**, and as reiterated in **N. Balakrishnan (Supra)**, the length of delay is not, by itself, the main consideration. What is to be examined is the acceptability of the explanation offered, and a delay of the shortest range may be condoned where that explanation is found to be *bona fide*. Keeping in mind this settled position of law, a delay of three days, attributable to a stated misunderstanding as to the date of service, does not disclose the degree of negligence or inaction that would ordinarily warrant refusal of condonation.



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26. Insofar as the respondent seeks to distinguish **Howrah Municipality (Supra)** on the ground that the impugned order dated 30.07.2026 records specific reasons, it is this Court's observation that the reasons so recorded by the learned Trial Court are directed at the petitioner's conduct after the memo of appearance came to be filed, and at the delay attending the subsequent applications for recall and condonation, rather than at the *bona fides* of the three-day delay in entering appearance considered on its own terms.

27. Similarly, the absence of contemporaneous medical documents, though noted by the learned Trial Court, is not, in this Court's assessment, determinative of the outcome. The petitioner's primary explanation for the three-day delay lies in the stated miscommunication as to the date of service, and the medical condition appears to have been pleaded as a supporting, rather than the sole ground. The infirmity in the medical material accordingly does not, by itself, displace the main explanation offered. As regards the non-service of the memo of appearance upon the respondent, this Court is of the view that this omission, while a procedural lapse, is entirely distinct from the question of condonation of the three-day delay.

28. It is reiterated that the consequence of a refusal to condone even a short delay under Order XXXVII CPC is severe, namely, a decree without adjudication on merits. As observed by the Hon'ble Supreme Court in **Howrah Municipality (Supra)**, the discretion under Section 5 of the Limitation Act, 1963 exists so that a litigant is not foreclosed from putting forth defence on account of some procedural lapse. The same consideration applies with particular force herein as the delay sought to be condoned is of only three days. The relevant observations



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of the aforesaid judgment having bearing on the issue involved in the present petition is reproduced herein below for ready reference:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

29. For the aforesaid reasons, this Court is inclined to condone the delay of three days in entering appearance, in exercise of the power under Order XXXVII Rule 3(7) CPC. The impugned order dated 30.07.2026 is set aside. Consequently, the order dated 04.12.2025, whereby the respondent was held entitled to judgment in terms of Order XXXVII Rule 2(3) CPC, is also set aside.

30. The petitioner is directed to file his leave to defend application in the underlying suit bearing CS DJ No. 411/2025, subject to payment of costs of Rs. 10,000/- payable to the respondent within a period of one week, to account for the delay caused to the respondent in the conduct of the proceedings.

31. In view of the above, the learned Trial Court is directed to fix a date for filing of the petitioner's leave to defend application, subject to



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the exigencies of its board, and to further proceed with the underlying suit in accordance with law.

32. Accordingly, the present petition is disposed of, in the above terms. Pending application(s), if any, also stand disposed of.

33. Needless to clarify, the aforesaid observations are confined to the present petition, and shall not be construed as an expression of opinion on the merits of the case.

34. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

SEPTEMBER 18, 2026/AS/os