



2025:DHC:7157-08



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

Date of decision: 19th August 2025

+ **FAO (COMM) 213/2025 & CM APPL. 47671/2025, CM APPL. 47673/2025**

KRISHAN LAL @ RAJ SUNEJAAppellant

Through: Mr. Rishi Manchanda, Mr. Siddharth Mullick, Mr. Arun Kumar and Mr. Lakhan Gupta, Advs. with appellant in person.

versus

SURINDER MOHAN JINDALRespondent

Through: Mr. Archit Singhal, Ms. Ritu Jain and Ms. Shubhangi Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. Heard the respective counsels.
2. The challenge in the present proceedings is to the impugned order dated 19th July, 2025, passed by the District Judge (Commercial Court)-05, West, Delhi in Case No. *MiscDJ/610/2025* titled as "*Surinder Mohan Jindal Vs. Krishan LaL @ Raj Suneja*".



3. The aforesaid order was passed by the District Judge in exercise of powers under Order IX Rule 13 of the Code of Civil Procedure 1908 (“CPC”), whereby the prayer of the present appellant (*original defendant/Judgement Debtor*) for setting aside the *ex parte* decree came to be dismissed.

4. The facts necessary for deciding the present appeal are that the respondent (*original plaintiff/Decree Holder*) initiated proceedings for recovery of Rs.1,01,97,217/- based on business transaction.

5. Summons were issued on 4th September, 2024 and served on 13th September, 2024. It is alleged that the appellant/defendant engaged a lawyer, *Mr. Vivek Luthra*, who was related to him, and after handing over the papers to the said lawyer, sought additional documents as the documents received were illegible. It appears that in the interregnum the said lawyer failed to put in his appearance for the appellant/defendant in the suit.

6. A subsequent attempt was made on the part of the appellant/defendant to pursue the lawyer to file his appearance and it was assured; however, it appears that neither appearance was placed on record nor the written statement filed. Subsequent thereto, on 14th November, 2025, the appellant/defendant was proceeded *ex parte*.

7. After the aforesaid order, the respondent/plaintiff moved an application under Order VI Rule 17 of CPC seeking amendment to the plaint. The suit was initiated in the name of a proprietary firm, however the proprietor was not impleaded resulting in the amendment was moved.



The said amendment came to be allowed on the very same date. The learned Trial Court received the evidence and closed the same whereafter the arguments were concluded in one go. All these events occurred on 11th December 2024.

8. As a sequel an *ex parte* decree came to be passed which has prompted the appellant/defendant to invoke the provisions of Order IX Rule 13 of CPC.

9. After the aforesaid decree was put for the execution, it is claimed by the appellant/defendant that he came to know about the *ex parte* decree. This prompted him to initiate the proceedings, alleging that after summons were received on 13th September, 2024, he contacted the lawyer who happened to be his relative, and post assurance given by the said lawyer, he was made to understand and given the impression that appropriate steps would be taken to defend the suit as per law.

10. It is further claimed that the appellant/defendant relied upon the advice given by the lawyer, and the lawyer has failed not only to place his appearance on record but also to file his written statement, which led to the suit being proceeded *ex parte*.

11. It is specifically claimed in the application that the appellant/defendant is a heart patient and has undergone a *bypass surgery* and, subsequent thereto, he has been suffering from a heart ailment. He is under advice from expert doctors that to undergo surgery again. For the aforesaid cause, the appellant/defendant remained absent in the proceedings and, as such, there was sufficient cause on his part



demonstrated before the Trial Court to make out a case under Order IX Rule 13 of CPC for setting aside an *ex parte* decree.

12. The aforesaid contentions are sought to be substantive based on the documentary evidence.

13. As against above, the learned counsel for respondent/plaintiff vehemently urged that the conduct of the appellant/defendant does not call for any equities to be considered in his favour, as post decree, the appellant/defendant not only avoided appearance in the execution proceedings by virtue of his conduct, but it can also be inferred that the proceedings leading to the *ex parte* decree were well within his knowledge.

14. It is claimed that the decree in question is under execution and the execution proceedings are at the final stage. As such, the appellant/defendant, in order to save himself from execution of the decree, has approached this Court questioning the order impugned under Order IX Rule 13 of CPC.

15. It is claimed that in absence of sufficient cause, the proceedings were rightly concluded against the appellant/defendant by the Trial Court *vide* impugned order dated 19th July 2025. That being so, rejection of the present appeal is sought.

16. It is further claimed that the sufficient cause sought to be espoused, *viz.* medical ailment, is not supported by any documentary evidence to infer that he was prevented from participating in the proceedings in question.



17. We have considered the rival claims.

18. It is borne out from the record that in the very proceedings under Order IX Rule 13 of CPC, the appellant/defendant specifically stated that he had hired the services of a lawyer namely *Mr. Vivek Luthra*, who had given him an undertaking that he would take steps in the matter not only for filing appearance but also for filling the written statement.

19. The fact remains that *Mr. Vivek Luthra*/lawyer engaged by appellant has chosen neither to file appearance nor the written statement in the matter. Rather, the claim in the suit went unattended and uncontested on the part of the appellant/defendant, and as such, he was made to suffer the *ex parte* decree in question.

20. Learned counsel for appellant/defendant has rightly drawn support from the judgment of the Apex Court in the matter of *Rafiq v. Munshilal*, (1981) 2 SCC 788, which was further followed by the Apex Court in *Dwarika Prasad (D) v. Prithvi Raj Singh*, 2024 SCC Online SC 3828, to contend that for the default of a lawyer, a litigant may not be made to suffer.

21. It is borne out of the record that the appellant/defendant specifically claimed that it was his lawyer who, despite being engaged by him, had failed to appear inspite of instructions given to him.

22. The fact remains that the Trial Court appears to have decided the suit in question in a hasty manner, as everything was concluded on 11th December, 2024, as referred to hereinabove.



23. There is one more reason which prompts us to exercise our powers in the present case, *viz.* the haste in which the Trial Court proceeded to pass the decree. If we consider the record of the Trial Court produced before this Court, it is apparent that the suit was initiated on 1st July, 2024.

24. Summons of the suit were issued to the appellant/defendant on 04th September, 2024 and on 11th December, 2024, the Court noted that though the appellant/defendant was served, he chose to remain absent, and as such, the suit was directed to proceed *ex parte*.

25. It appears that on 11th December, 2024 i.e., when the suit hearing was adjourned, the respondent/plaintiff moved an application under Order VI Rule 17 of CPC, which came to be allowed, without there being any notice to the appellant/defendant.

26. A perusal of the scheme under Order VI Rule 17 CPC, provides for amendment of pleadings, contemplates that an embargo is created in the matter of amendment of the pleadings in case the trial has commenced.

27. In a civil proceedings, particularly in a civil suit, the trial commences upon framing of issues and in fact takes effect from the stage of recording of evidence i.e. when the court takes cognizance of suit.

28. It is apparent that on the very date i.e. 11th December 2024, not only was the plaint permitted to be amended by accepting the application presented on the very same day and that too without any notice to the appellant/defendant, but the amendment was further permitted to be



carried out by recording that it was formal in nature, *viz.* change in the title of the respondent/plaintiff. Thereafter, the affidavit of the respondent/plaintiff [PW1] was taken on record, he was examined, and on the very same day the evidence was closed, and the final arguments were heard concluded.

29. On 11th December, 2024, the Court has farmed the issues, granted the prayer for amendment, then concluded the trial by recording evidence and hearing arguments in haste. In fact the Trial Court should have issued the notice on application for amendment to the appellant/defendant.

30. Having regard to the aforesaid, an option was given to the respondent/plaintiff that the appellant/defendant could be directed to deposit an amount of *Rs. 15,00,000/-*, either in this Court or before the Trial Court, and in case of consent thereto, not only the application under Order IX Rule 13 of CPC would be allowed by consent, but the *ex parte* decree would also be set aside and the parties can be relegated to a *denovo* trial on a fixed date, thereby expediting the trial.

31. We are sensitive to the fact that the decree in question is a money decree, and while working out the equities, we were inclined to put the appellant/defendant to the condition to depositing *Rs. 15,00,000/-*.

32. Counsel for respondent, on instructions from the respondent/plaintiff, has declined the aforesaid suggestion.



33. There is one more facet to the matter: the matter was referred to mediation, as it was agreed between the parties that the parties litigating were once friends.

34. The aforesaid factual matrix and reasons noted hereinabove prompt us to rely on the judgment of Apex Court in the matter of ***Dwarika Prasad (D) v. Prithvi Raj Singh*** (*supra*). The observations of the Apex Court, particularly in *paragraph 9*, are worth referring to, which reads as under:

“9. We have heard learned counsel for the appellant and perused the record. We are of the opinion that the High Court has erred in upholding the order of the Additional District Judge. The Trial Court had rightly allowed the restoration application filed by the Appellant under Order IX Rule 13 of CPC. It is well settled that Courts should not shut out cases on mere technicalities but rather afford opportunity to both sides and thrash out the matter on merits. Further, we cannot let the party suffer due to negligent or fault committed by their counsel. This principle has been enunciated by this court in the case of Rafiq v. Munshilal, quoted as follows:

“3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of



the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both



dismissing the appeal and refusing to recall that order.....” ”

(emphasis added)

35. In the aforesaid background, if we consider the factual matrix, *viz.* that the appellant/defendant, being a heart patient who has undergone *bypass surgery*, had instructed his lawyer to appear in the matter, and it was his lawyer’s failure which prompted the decree to be passed *ex parte*, we are prompted to accept the contentions of appellant/defendant.

36. The material brought on record by the appellant (original plaintiff)/decree holder prompt us to believe that he has taken sufficient steps by instructing and appointing a lawyer which in law otherwise is expected of. From the factual matrix he has established that it was the lawyers fault which has made him suffer the decree in question. The provision of Order 9 Rule13 permits the parties like appellant who has suffered an *ex parte* decree to apply to the court who has passed the decree for setting aside *ex parte* decree. The Trial Court in such an eventuality, if so, satisfied that the suit when was called out, the appellant was prevented by sufficient cause from appearing in the Court and as such same has lead to the *ex parte* decree being passed against him can seek setting aside of such *ex parte* decree.

37. As such not only the health condition of the appellant, but also the failure of his lawyer as referred to hereinabove has prompted us to infer that the appellant is able to establish sufficient cause which has prevented him from appearing before the Trial Court. However, the decree can be set aside subject to eh terms and conditions and the appellant has



volunteered in response to the court's query that he shall deposit an amount of Rs.15,00,000/-.

38. As such, the impugned order dated 19th July 2025 whereby the request for appellant for quashing and setting aside *ex parte* decree was rejected is hereby quashed and set aside subject to following terms and conditions. The said application referred under Order 9 Rule 13 is hereby stand allowed. As a sequel of which the *ex parte* decree passed by the learned Trial Court in Suit No. *MiscDJ/610/2025* dated 19th July, 2025 is hereby quashed and set aside and the suit stood restored to the file of the learned Trial Court subject to compliance of following terms and conditions in terms of provisions of Order 9 Rule 13 of the CPC.

39. An undertaking given by the appellant/defendant that in any case by *Monday* i.e., *25th August 2025*, the appellant/defendant shall deposit an amount of *Rs. 15,00,000/-* before the Trial Court is accepted.

40. The impugned order dated 19th July, 2025 is hereby quashed and set aside and the present appeal is allowed in the aforesaid terms.

41. We make it clear that no extension on whatsoever account shall be granted to the appellant/Judgement Debtor in the matter of deposit of the said amount. In case of failure on the part of the appellant/Judgement Debtor to deposit the said amount, the order passed by this Court setting aside the order under Order IX Rule 13 of CPC shall not be given effect. As a sequel, it shall be open for the respondent/Decree Holder to proceed ahead with the execution proceedings.



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42. In case if the amount of *Rs. 15,00,000/-* as undertaken is deposited, we make it clear that the parties shall appear before the Trial Court on 25th August 2025.

43. We direct the Trial Court to decide the suit proceedings afresh expeditiously and, in any case, within a *period of six months* from the date of appearance, i.e 25th August 2025.

44. The appeal stands allowed in above terms.

45. We further make it clear that in case the suit is decreed against the appellant/Judgement Debtor pursuant to the present order passed by this Court, the respondent/Decree Holder shall be entitled to withdraw the amount of *Rs.15,00,000/-* forthwith, subject to furnishing an undertaking before the Trial Court that in case the appellant/Judgement Debtor succeeds in appeal, he shall repay the said amount with interest as shall be directed by the Appellate Court.

46. Accordingly, the appeal stands disposed of. Pending applications shall be rendered as infructuous.

47. A copy of this judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**ANISH DAYAL
(JUDGE)**

AUGUST 19, 2025/sky/tk