



2025:DHC:9899



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:11.11.2025*

+ FAO 307/2025 & CM APPLs. 70086/2025 & 70087/2025

SH SURYA PRAKASH GUPTAAppellant

Through: Mr. Bharat Sareen and Mr. Sonu Singh,
Advocates

Versus

N.S. CHAHAL AND ORSRespondents

Through: Mr. Sharique Hussain and Ms. Kirti
Garg, Advocates for R-5.**CORAM:****HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. The present appeal under Section 104 read with Order XLIII Rule 1 of the Civil Procedure Code, 1908 (the CPC), has been filed for assailing the Annexure A-1 order dated 27.09.2025 passed by the learned District Judge, New Delhi (the trial court) in **Misc. DJ No. 544/2024**, whereby the appellant's/defendant's application under Order IX Rule 13 the CPC read with Section 151 of the CPC, and the accompanying application under Section 5 of the Limitation Act, 1963 (the Act) seeking condonation of delay, were dismissed.



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2. The facts necessary for adjudication are-The respondent/plaintiff instituted a suit in 2013 seeking declaration and cancellation of a sale deed dated 17.05.2013 executed in favor of the appellant and for injunction. The suit was dismissed for non-prosecution on 01.04.2019. Thereafter, an application under Order IX Rule 9 CPC for restoration was filed on 06.04.2019 which was registered as Misc. DJ No. 54/2019. The said application was allowed on 04.04.2022 and the suit restored to its original number. On 07.06.2022, the appellant/defendant was proceeded *ex-parte*, and an *ex-parte* decree was ultimately passed on 26.07.2023.

3. The appellant/defendant claims to have learnt of the *ex-parte* decree only on 18.05.2024 when the bailiff visited his premises for execution of warrant of possession in Execution Petition No. 65/2024. Thereafter, in June 2024, he moved an application under Order IX Rule 13 CPC seeking recall of the decree and an application under Section 5 of the Act for condonation of delay of 350 days, asserting that he was unaware of the restoration



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proceedings and that his earlier counsel had left private practice after joining government service and later the judicial services during the COVID-19 period.

4. The trial court, after examining the records and hearing both sides held that the appellant/defendant had been duly represented through counsel during the restoration proceedings; that a reply and affidavit had been filed on his behalf to the said restoration application; that his counsel had continued to appear till at least August 2021, and that the appellant had failed to show any sufficient cause for his non-appearance or the delay. It was thus held that the plea of ignorance was not *bona fide* and the application was dismissed.

5. The learned counsel for the appellant/defendant submits that the trial court erred in concluding that the appellant was served. It was urged that the earlier counsel stopped appearing for him after joining the judicial service. The counsel also failed to communicate the status of the proceedings, and so the appellant, being a *bona fide*



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purchaser, ought not to be penalised for his lawyer's inadvertence. It was further submitted that the appellant was simultaneously defending a criminal case initiated by the respondent under Section 156(3) of the Criminal Procedure Code, 1973, alleging forgery of the same title deed and that he had no reason to believe that the civil suit had been revived. It is also contended that the appellant/defendant acted promptly upon learning of the decree during the bailiff's visit and as the delay was marginal, the trial court ought to have condoned the same in the interest of justice. The appellant relies on the dictum in **Lal Devi v. Vaneeta Jain, AIR 2007 SC 1889**, and **Krishan Lal v. Surinder Mohan Jindal, 2025:DHC:7157** to contend that a litigant should not suffer for the mistake of his counsel.

6. On the other hand, it is submitted by the learned counsel for the respondent/plaintiff that the allegation that the appellant/defendant was unaware of the restoration of the suit and the further proceedings is apparently false as he was represented by



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a lawyer who had also filed counter to the application for restoration. Further, the application was also filed beyond the period of limitation. No sufficient has been shown for condonation of delay. There is no infirmity in the order of the trial court. Hence, the application and the appeal are liable to be dismissed.

7. The trial court's finding that service had been duly effectuated through the counsel who had been representing the appellant cannot be faulted. Once appearance through counsel is recorded, it is deemed service in law, unless the party shows that such representation was without authority, which is not the case here. The argument that the appellant/defendant was unaware of the filing of the application for restoration of the suit cannot be believed or accepted for a moment because he is seen to be have been represented by a counsel of his choice who is also seen to have filed reply to the application. He takes up a contention that the counsel concerned never informed him of the proceedings. Therefore, he has



put the entire blame on the counsel who had been earlier engaged by him.

8. The law under Order IX Rule 13CPC is well settled—a decree can be set aside only if the defendant shows that summons was not duly served or that he was prevented by sufficient cause from appearing. The appellant fails to satisfy either limb.

9. Negligence or inadvertence of counsel, unless coupled with exceptional circumstances or proof of fraud, cannot constitute sufficient cause. Courts are required to balance the right to hearing on merits with the principle of finality of proceedings. In the present case, the conduct of the appellant demonstrates lack of diligence rather than *bona fide* error. In this context I refer to the judgment dated 21.11.2021 of the Apex Court in **Rajneesh Kumar v. Ved Prakash, S.L.P. (Civil) Nos. 935-936 OF 2021**, which was also a case where the entire blame was thrown on the head of the advocate who was appearing for the petitioners in the trial court. In the said case, the Apex court observed thus—we have noticed over a period of



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time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the lawyer concerned was careless or negligent, this, by itself cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief. In the decision, reference is made to the dictum in **Salil Dutta v. T.M & MC. Private Ltd., (1993) 2 SCC 185**, wherein it was observed that advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engages him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an *ex-parte* decree notwithstanding the negligence and/or misdemeanor



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of the advocate where it finds that the client was an innocent litigant. But there is no such absolute rule that a party can disown his advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult.

10. On the question of limitation, the application under Order IX Rule 13 CPC was filed about 350 days after the decree. The explanation that knowledge arose only upon the bailiff's visit has turned out to be false. Delay without due explanation cannot be condoned mechanically.

11. This Court finds no perversity, illegality, or error apparent in the impugned order.

12. The appeal, therefore, fails and is dismissed. Consequently, pending application(s), if any, stands disposed of.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 11, 2025/RN/mj