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

% ***Judgment Reserved on: 14th November, 2025***
Judgment pronounced on: 28th November, 2025

+ **FAO 53/2023 & CM APPL 11451/2023**

STATE OF NCT OF DELHI & ANR.Appellants

Through: **Mr. Anshuman, SPC with Mr.
Vaibhav Sood, Advocates.**

versus

DINESH KUMAR JAIN & ANR.Respondents

Through: **Mr. Tushar Sannu, Adv.(GNCTD)
with Mr. Utkarsh Singh, Advocate.
Mr. Jittin Dua, Advocate.
Mr. Vinay Gupta, Mr. Ram Manohar
Singh, Ms. Chandni Singh,
Advocates.**

**CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Section 104 read with Order XLIII Rule 1(d) of the Civil Procedure Code, 1908 (the CPC) impugns the **order dated 30.01.2023** passed by the learned District Judge, East District, Karkardooma Courts, in **Misc. DJ**



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No. 21/2022 in O.S. 2738/2016, whereby the appellants'/defendants' application under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree dated 11.02.2020 was dismissed on the dual grounds of limitation and absence of sufficient cause.

2. The respondent/plaintiff instituted a suit for declaration of title, possession, and consequential reliefs, originally registered as **CS No. 158/2012** on the file of this Court. The appellants/defendants appeared through counsel and filed their written statement contesting the respondent's/plaintiff's claim.

3. Consequent upon enhancement of pecuniary jurisdiction, the suit stood transferred to the District Court pursuant to Notification dated 24.11.2015, and the record was made returnable to the Court of the learned District Judge *vide* order dated 27.04.2016.



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4. According to the appellants/defendants, they obtained knowledge of the *ex-parte* decree only when they received notice in Execution Petition No. 113/2020, pursuant to which they immediately took steps to file application for setting aside the *ex-parte* decree which application was taken on record on 14.01.2022 along with an application for condonation of delay.

5. The respondent/plaintiff filed objection contending that no reasons have been made out for condonation of the long delay and that the appellants/defendants were well aware of the pendency of the suit and the decree that was passed thereafter as repeated notice had been given by the trial court. As no reasons are made out, the respondents/plaintiffs canvassed for a dismissal of the application.

6. The trial court after hearing both sides, *vide* the impugned order dated 30.01.2023 dismissed the application primarily on the grounds that the application was grossly time-barred; that no valid



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or complete application under Section 5 of the Limitation Act, 1963 (the Act) was filed; and that even assuming limitation could be condoned, the appellants/defendants had failed to show sufficient cause for non-appearance, given the earlier appearances of police officials and the “long and unexplained silence” thereafter. Aggrieved, they appellants/defendants have come up in appeal.

7. The learned counsel for the appellants/defendants submitted that the trial court erred in dismissing Misc. DJ No. 21/2022 on the ground that there was no application filed for condonation of delay, when in fact along with the application under Order IX Rule 13 CPC, the appellants/defendants had filed a separate application under Section 5 of the Act for condonation of delay.

7.1 The learned counsel would also vehemently contend that the appellants/defendants became aware of the *ex-parte* judgment



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and decree dated 11.02.2020 only when process was received in Execution Petition No. 113/2020 on or about 06.09.2021 and again on 15.12.2021, and that the recall application was filed promptly on 27.01.2022. It was further emphasised that the appellants/ defendants acted with diligence once knowledge of the decree was acquired and that there was no deliberate default.

7.2 The learned counsel would further augment his contention by explaining that the non-appearance before the trial court after transfer from the High Court resulted from a breakdown in communication. The counsel engaged for the proceedings in the High Court was not appointed for the District Court; the internal mechanism for transmission of briefs did not function effectively; and that the occasional appearances by the police officials were merely administrative and that the matter had not been conveyed to the litigation branch.

7.3 To support the plea that “sufficient cause” existed, the



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learned counsel for the appellants/defendants places reliance upon the dictums in **G.P. Srivastava v. R.K. Raizada**, (2000) 3 SCC 54 and **Deputy Commissioner of Police v. Neelam Rani**, MANU/DE/4033/2022. It is contended that these authorities establish that courts must adopt a liberal approach while assessing sufficient cause, particularly where departmental miscommunication following transfer of the case, has led to the absence and where the litigant has acted promptly upon gaining knowledge.

7.4 The learned counsel for the appellants/defendants in order to fortify his contention, would further submit that the factual matrix of the present case is closely comparable to that considered by this Court in **Neelam Rani** (*Supra*), wherein departmental lapses in transmission of the brief and disruption in representation resulted in the defendants being proceeded *ex-parte*. The counsel argued that, as in **Neelam Rani** (*Supra*), the



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appellants/defendants herein also suffered an *ex-parte* decree owing to administrative breakdown in communication after transfer of the matter, coupled with the mistaken belief that the counsel continued to represent them. It is thus urged that applying the principle laid down in **Neelam Rani** (*Supra*)—that such lapses constitute “sufficient cause” when the litigant acts promptly upon acquiring knowledge—the present appeal ought likewise to be allowed and the matter restored for hearing on merits.

7.5 The learned counsel also relied upon the dictum in **Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Ltd.**, MANU/SC/1248/2017, to submit that procedural rules are intended to facilitate justice and not to defeat adjudication on merits.

8. On the other hand, the learned counsel for the respondent/plaintiff submitted that the appellants/defendants were repeatedly served with summons/notice and had several



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opportunities to contest the suit. The learned counsel highlights that both the counsel and police officials appeared on multiple dates before the trial court, yet the appellants/defendants thereafter deliberately failed to pursue the matter. It is urged that the explanation now offered is an afterthought and reflects wilful negligence rather than excusable omission. The appellants/defendants have not furnished any particulars of delay on a day-to-day basis, and so the trial court correctly found that no proper or sufficient condonation application was before it.

8.1 Relying on **Sudarshan Sareen v. NSIC, Parimal v. Veena**, and **Postmaster General v. Living Media India Ltd.**, (2012) 3 SCC 563, it was submitted that government departments cannot seek lenient treatment on the ground of systemic inefficiencies, and that a liberal approach to limitation cannot be extended where the record demonstrates prolonged and unexplained inaction.



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9. Heard both sides and also examined the materials on record.

10. The following essential facts are not in dispute. The appellants/ defendants had filed their written statement when the suit was pending before this Court. Upon enhancement of pecuniary jurisdiction, the suit stood transferred to the District Courts, and thereafter the appearance of the appellants/defendants became irregular. Police officials appeared on a few dates, but no counsel continued on their behalf, and ultimately, on 19.08.2017, the defendants were proceeded ex-parte. The respondent/plaintiff led un rebutted evidence, including the deposition of PW-3 (Patwari) and PW-5, together with revenue records such as the jamabandi and khasra-girdawari, culminating in the ex-parte judgment and decree dated 11.02.2020.

11. It is also not disputed that the appellants/defendants did not move any application before the trial court between the date of



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being proceeded *ex-parte* and the passing of the *ex-parte* decree. The application under Order IX Rule 13 CPC was filed only on 27.01.2022. The first question is whether the appellants/defendants had placed on record a proper application for condonation of delay. On going through the records, I find that the appellants/defendants did file an application for condonation of delay, which application is seen at page 141, that is, Annexure J (colly). But the delay is stated to be only 15 days, to which aspect, I shall come to shortly. Hence, the finding of the trial court that no application for condonation of delay has been filed, is incorrect.

12. Now, coming to the question whether sufficient reasons have been shown for the condonation of delay. In the application under Order IX Rule 13 CPC the allegations are that :

“4. That as the matter was initially filed by the plaintiff before the Hon'ble Delhi High Court i.e. CS (OS) No. 158/2012 and the Applicant/ Defendants filed there Written Statements before the Hon'ble Delhi High Court stating all the correct averments



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and explaining as to how the property in question was allotted to the Applicants/ Defendants, and as the present case was transferred from the Hon'ble Delhi High Court to Karkardooma Court the Police officers who were appearing were under impression that that reply has already been filed and they need not todo any other task in the matter, due to which the Applicant/ Defendants were proceeded ex-parte despite the fact that they were appearing on each and every dates.

5. That it is also pertinent to mention herein that the plaintiff was very well aware that as the Defendants have been proceeded ex parte, the plaintiff succeeded in his plan of getting the favorable Judgment by concealing the very fact from the Hon'ble Court, that the Suit Property in question is very well allotted to Applicant/Defendants. (Copy of Letters and Documents with List of Documents attached with this application for the kind perusal of the Hon'ble Court)

6. That the Applicant/ Defendants came to know about the ex-parte Judgment/Decree upon receiving the Summons of the Hon'ble Court in Execution Petition No. 113/2020 and thereafter the Applicant/ Defendants contacted the litigation department and sought assistance of Government Counsel.



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7. That the applicant/ defendants took opinion of the Ld. Standing Counsel of the GNCTD for appropriate remedies and the Applicant/ Defendants thereafter took all the necessary steps.

8. That the applicant/ Defendants, immediately thereafter contacted the Legal Cell of Delhi Police and who in turn immediately requested the Government Counsel to appear before the Hon'ble Court in the Execution Petition no. 113.2020 on the date of hearing and the Ld. Government Counsel also appeared on the date of hearings before the Hon'ble Court and filed its objections. The Hon'ble Court on 14.01.2022 was pleased to take the objections on record and directed the DH to reply to objections.....”

(Emphasis supplied)

13. The averments in the application will make it obvious that the contention of the appellants/defendants that they came to know of the decree only on receipt of notice in the execution is absolutely false. They themselves admit that they were aware of the fact that the case had been transferred to the Court at Karkardooma, but they were under the impression that as a reply



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had been filed, they need not do anything further in the matter. The affidavit accompanying the application for condonation of delay is seen affirmed by the SHO, Gandhi Nagar Police Station. The said officer cannot be heard to advance such an argument. He is not an illiterate or rustic person. I will still assume for a moment that this contention is also true and that the appellants/defendants were under the *bona fide* impression that they need not do anything after the filing of the written statement. Now, the question is whether the said assertion is true or probable. I am afraid that I will have to answer the same in the negative because the trial court in the impugned order says that initially the appellants/defendants and the counsels were appearing. On completion of pleadings, necessary issues were framed in the presence of the counsel for the appellants/defendants. On 05.07.2014, they had also partially cross-examined PW-1, the plaintiff. Thereafter, the matter was adjourned to 09.11.2016 and



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05.04.2017 to enable the appellants/defendants to complete the cross-examination of PW-1. The trial court also issued notice to the defendants vide order dated 16.02.2017. Pursuant to the notice being served, on 05.07.2017 ASI Rajinder Singh and Sub-Inspector Nishant on behalf of the first defendant appeared before the trial court. On 14.07.2017, Sub-Inspector Manish Tyagi appeared on behalf of the second defendant. However, from the next date of hearing onwards, none appeared on behalf of the appellants/defendants and they failed to cross examine the plaintiff and his witnesses. Thereafter, vide order dated 02.08.2018, the trial court again issued notice to the second defendant, i.e., the SHO Gandhi Nagar Police Station. On 11.10.2018, Sub-Inspector Manish Tyagi appeared before the trial court on behalf of the SHO Gandhi Nagar police station. After the passing of the judgment and decree in the year 2020, the respondent/plaintiff filed a caveat petition before this Court. A



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copy of the said petition, containing the details of the judgment was served on the appellants/defendants. These facts are not disputed by the appellants/defendants. Therefore, it is apparent that they were well aware of the proceeding or the pendency of the suit, the fact that the trial had started in the case as well as the decree that was passed on 11.02.2020. That being the position, the argument that the appellants/defendants came to know of the decree only when notice in the execution petition was served on them is apparently false. Likewise, the allegation in the application for condonation of delay that there is only 15 days' delay in filing the application under Order IX Rule 13 CPC is also wrong as the decree is dated 11.02.2020, whereas the application for setting aside the decree was filed only in the month of January 2022, that is, after a delay of about 2 years.

14. It is submitted by the learned counsel for the appellants/defendants that serious prejudice would be caused if



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the *ex parte* judgment and decree are not set aside as the Gandhi Nagar police station is situated in the disputed property and therefore, the consequences of the decree not being set aside would be quite disastrous. The matter is indeed serious. The appellants/defendants must also have been aware/conscious of the same. It is beyond my comprehension as to why the appellants/defendants did not contest the case despite receipt of summons and in fact, initially taking part in the trial by partly cross-examining the plaintiff. What reasons prompted the appellants/defendants from not appearing before the trial court is known only to them. This is a fit case in which the officers concerned who were in-charge or responsible for the conduct of the case be proceeded against. The government is the biggest litigant and they lose most of the cases only because of such failures/omissions deliberate or otherwise on the part of its officials. The conduct of the officers in initially appearing in the



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case and taking part in the litigation and then suddenly disappearing from the scene without absolutely any reason(s) being shown, constrains this Court to even doubt whether the non-appearance was deliberate/intentional. Were the officials in fact, colluding with the plaintiff and helping him by not appearing before the trial court? The circumstances and materials on record constrain me in thinking so.

15. It is true that the expression “sufficient cause” must receive a liberal construction, as held in **G.P. Srivastava** (*Supra*) and **Surendra Trading Company** (*Supra*). However, these authorities do not dispense with the requirement of bona fide conduct. Liberal interpretation does not extend to situations where the record shows complete inaction and indifference. The defendant/appellants' conduct does not satisfy even the basic threshold necessary for invoking the discretion under Order IX Rule 13 CPC.



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16. The learned counsel for the defendant/appellants heavily relied upon the dictum in **Neelam Rani** (*Supra*), contending that the present case stands on a similar footing. This submission is misconceived. In **Neelam Rani** (*Supra*), the defendants had taken timely and concrete steps to appoint Government counsel by issuing a Brief Transmission Form (BTF), and the non-appearance occurred only because the counsel did not receive the BTF. The Court found that the defendants had acted diligently prior to being proceeded *ex-parte* and that no negligence could be imputed. The facts here are fundamentally different. The records disclose years of complete inaction. The factual matrix in **Neelam Rani** (*Supra*) thus offers no support to the defendant/appellants; if anything, the contrast highlights their lack of diligence.

17. The judgments relied upon by the respondent/plaintiff, including **Sudarshan Sareen** (*Supra*), **Parimal** (*Supra*), and **Postmaster General** (*Supra*), reiterate the principle that



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departmental lapses and systemic inefficiencies cannot form a basis for condoning prolonged negligence.

18. Further, in **P.K. Ramachandran v, State of Kerala & Anr., AIR 1998 SC 2276**, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held 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 and the Courts are not to extend the period of limitation on equitable grounds.

19. In **Pundlik Jalam Patil v. Executive Engineer Jalgaon (2008) 17 SCC 448**, it was observed that the Courts cannot inquire into belated and stale claims on the ground of equity. Delay defeats equity. Courts help those who are vigilant and do not slumber over their rights. In **Majji Sannemma @ Sanyasi Rao v, Reddy Sri Devi and Others (DOD : 16.12.2021)**, it was



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observed that the law of limitation has to be applied with all its rigour, when the statute so prescribes and Courts cannot extend the same on equitable grounds.

20. On a cumulative assessment, the appellants/defendants have failed to discharge the burden of showing either satisfactory explanation for delay or sufficient cause(s) for their absence. The trial court's reasoning is based on a correct appraisal of the materials on record and does not suffer from any illegality, perversity, or misdirection.

21. For these reasons, the appeal *sans* merit, is accordingly dismissed. No order as to costs. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 28, 2025
Rs/rn