



2026:DHC:8636-DB



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

Reserved on: 29.09.2026
Pronounced on: 05 .10.2026
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CNR No. DLHC010226122024

+ **FAO (COMM) 72/2024**

RICHMOND GLOBAL SCHOOLAppellant

Through: **Dr. Vipin Wason and Ms. Stuti Wason, Advs.**

versus

SHRI VIJAY KUMAR JAINRespondent

Through: **Mr. Mukesh Kumar and Mr. Harsh Kashyap, Advs.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE BHARAT PARASHAR

JUDGMENT

BHARAT PARASHAR, J

1. The present appeal filed under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(d) of the Code of Civil Procedure, 1908 ('CPC') by the Appellant who was Defendant No. 1 in the suit assails the order dated 11.03.2024 passed by the learned District Judge (Commercial Court)-03, West District, Tis Hazari Courts, Delhi, whereby the application under Order IX Rule 13 CPC of the Appellant herein was dismissed.



2. For ease of reference, the parties shall hereafter be referred to as the Appellant and the Respondent, the latter being the Plaintiff in the Suit, while the remaining defendants shall be referred to by the description assigned to them there.

FACTUAL MATRIX

3. The Respondent supplied fancy dress material to the Appellant against Invoice No. 1216 dated 06.01.2020 for ₹4,78,000/-. The supply is not disputed. An advance of ₹1,00,000/- had been paid in December 2019, leaving a balance of ₹3,78,000/-. Towards this balance, seven cheques of ₹50,000/- each, Nos. 001987 to 001993 and dated between 08.04.2020 and 15.04.2020, were issued. All were returned unpaid, as per Return Memos dated 16.04.2020 and 03.07.2020. The Appellant attributes the dishonour to the closure of the school during the pandemic lockdown. It also claims to have paid ₹1,78,000/- in cash (₹1,50,000/- and ₹28,000/-) against vouchers dated 10.07.2020 and 14.07.2020. On this basis, it says that the total payments made are ₹2,78,000/- and only ₹2,00,000/- remains due. The Respondent acknowledges no payment other than the advance of ₹1,00,000/-.

4. The case of the Respondent is that he has been after the Appellants for the recovery of his due amount. To that effect, he issued a legal notice dated 29.07.2020, which he says remained unanswered. He then invoked pre-litigation mediation under Section 12A of the 2015 Act, which ended in a Non-Starter Report dated 10.11.2022. On the manner in which that pre-trial mediation proceedings were conducted,



the parties are at odds. The Appellant says it never received any notice and so could not attend, and that when it later inspected the mediation file it found only the Non-Starter Report. The Respondent says the Appellant was duly intimated by the Mediation Centre but he chose to stay away.

5. The dishonour of the cheques also led to proceedings under the Negotiable Instruments Act, 1881 (for short, NI Act). On 27.08.2020, the Respondent filed a complaint under Section 138 of the NI Act as CT Cases 7347/2020 before the learned JMFC (NI Act), North-West, Rohini. The complaint is pending. In those proceedings under NI Act also, the parties were referred to mediation and where the Appellant though participated but the Respondent is stated to have stayed away.

6. The Court, however, is not concerned in this Appeal with the truth of these rival assertions, nor with the effect of the pending complaint on the amount due. A prosecution under Section 138 of the NI Act and a suit for recovery of the price of goods rest on different foundations and serve different ends. They are noticed here only because they form the background against which the Appellant's conduct has to be assessed.

PROCEEDINGS BEFORE THE COMMERCIAL COURT

7. Towards recovery of amount due, the Respondent instituted CS (COMM) No. 94/2023 on 23.01.2023 for recovery of ₹5,82,120/-, comprising principal of ₹3,78,000/- and interest of ₹2,04,120/-. Besides the Appellant, its authorised signatory and its CEO/Managing Director



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were impleaded as Defendant Nos. 2 and 3 (Respondent Nos. 2 & 3 herein).

8. Thereafter, summons were issued to all three defendants and, according to the process server's report and the 'registered-post tracking report', were delivered on 09.02.2023. The process server's report bears the signature of one Joginder, who described himself as the caretaker of the school and accepted the summons after speaking to some person on telephone. It is here that the Appellant's case, on factual grounds, takes shape. The appellant submits that Joginder was in fact its transport in-charge or manager having no authority to receive court process, and that he gave an incorrect telephone number, 011-25278011, on one of the summons. It was further submitted that he never informed the management about the summons and had soon thereafter stopped attending to his duties regularly, and resigned with immediate effect on 17.02.2023, as reflected in the attendance register and resignation letter filed as Annexure 5 to the present petition.

9. On 06.06.2023, the learned Commercial Court after noting that all three defendants had been served on 09.02.2023 by process as well as by registered post and that no written statement had come on record, and also that nobody was appearing for them, closed their right to file a written statement and proceeded ex parte against all three. The matter was thereafter fixed for ex parte evidence on 06.09.2023.

10. The Respondent then led ex parte evidence through his affidavit (Ext. PW1/A), his bank statement (Ext. PW1/1), the invoice (Ext.



PW1/2), the three original cheques with their return memos (Ext. PW1/3 to PW1/8) and the legal notice (Ext. PW1/9). After arguments on 13.09.2023, the learned Commercial Court, by judgment dated 22.09.2023, decreed the Suit for ₹3,78,000/- against the Appellant alone, with simple interest at 8% per annum from 01.02.2020 and costs. Since the plaint did not specify a rate of interest and the invoice contained no interest clause, the Court fixed the rate itself. Defendant Nos. 2 and 3 were not met with any liability, on the reasoning that an authorised signatory or a CEO/Managing Director is not personally liable for the trade obligations of the institution in the absence of a personal guarantee.

EXECUTION AND THE PETITION UNDER ORDER IX RULE 13 CPC

11. The decree was followed quickly by execution. The Respondent filed Execution Petition No. 456/2023 on 06.11.2023, and the executing court ordered notice on 07.11.2023, for the next date of hearing on 12.01.2024. The Respondent's tracking reports show that the notice was served by speed post and registered post on 11.11.2023, and the process server further reported physical delivery at the school on 22.11.2023, when one Ms. Leela, a security guard, accepted the notice.

12. The Appellant filed its petition under Order IX Rule 13 CPC on 12.01.2024, but did so without any application for condonation of delay. That application was moved only on 05.03.2024, after the Respondent had pointed to the issue of limitation in his reply. The Appellant's case was that it first learnt of the decree from the execution



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notice, and that the summons had never reached the management, having been kept by Joginder with other mail and having been found in the old records only when the staff were later asked to search for it. It also stated that the school was not in session on 09.02.2023, and that its CEO and Manager were out of station between 05.02.2023 and 12.02.2023. As for the delay, the Appellant sought condonation of thirteen days, explaining that certified copies were applied for on 24.12.2023, received on 08.01.2024, and the petition was filed four days after that.

THE IMPUGNED ORDER

13. The learned Commercial Court, however, dismissed both applications by the Impugned Order dated 11.03.2024. On limitation, it held that time under Article 123 of the Schedule to the Limitation Act, 1963 calculated either from 11.11.2023 (*notice was served by Speed Post*) or from 22.11.2023 (*notice was delivered by the Process Server*), expired on 11.12.2023 or 22.12.2023 respectively. The petition filed on 12.01.2024 was therefore beyond time, and the real delay was thirty-two days and not thirteen. Even otherwise, no sufficient cause was shown to condone it. In the Court's view, applying for certified copies more than a month after the execution notice, when an inspection of the record would have sufficed, betrayed a want of diligence and bona



fides, and it relied on *Basawaraj v. Land Acquisition Officer*¹ for the meaning of "sufficient cause".

14. The Court did not stop there, and went on to consider the matter on merits. It held that service on an employee was service on the institution, and the plea that the employee had not informed the management was unconvincing, particularly as no affidavit of Joginder, the principal or any office bearer had been filed. Since the Appellant had notice of the date of hearing and sufficient time to appear, the proviso to Order IX Rule 13 CPC was attracted. The Appellant was found to have been wilfully negligent.

FINDINGS & ANALYSIS

15. At the outset, we may state that the learned Trial Court has very lucidly dealt with each and every submission of the Appellant. The defence put forth by the Appellant that they came to know about the pendency of the suit or the subsequent passing of the *ex parte* decree only upon receiving the notice of execution has been elaborately dealt with and was on the face of it found to be neither sufficient nor convincing. It was specifically observed that the Appellant has failed to show any sufficient cause as was required under Order IX Rule 13 CPC, from appearing when the suit was called on for hearing or even subsequent thereto. In view of the admitted case of the Appellant that Joginder Singh who received the summons of the suit was an employee of the Appellant/School at the relevant time and that he admittedly

¹ (2013) 14 SCC 81



received the summons, there is no reason for this Court to now put back the clock merely on the assertion that the said Joginder was a disgruntled employee or he soon thereafter left the services of the school. It is also specifically mentioned in the Report of the Process Server, who went to deliver the process that the said Joginder received the summons after speaking on phone with someone. It thus can be easily presumed that the said Joginder must have informed the authorities concerned about the receipt of summons and thereafter only he received them.

16. The submission of learned counsel for the Appellant that the Appellant has always been ready to pay the balance amount of ₹2 lakhs or that payment with respect to three (03) out of seven (07) cheques was already made and that for the same reason, the Respondent did not prefer to file any complaint under Section 138 of the NI Act with respect to three (03) cheques is completely immaterial for the purpose of present proceedings. In fact, learned Trial Court has very clearly discussed that even after receiving the notice of Execution Petition, the Appellant was not vigilant enough and there was clearly unexplained delay in moving the application under Order IX Rule 13 CPC.

17. In the case of *Parimal vs. Veena @ Bharti*², the Supreme Court has held as under:-

“8.It is evident from the above that an ex-parte decree against a defendant has to be set aside if the party satisfies the Court that summons had not been duly served or he was prevented by sufficient cause from appearing

² (2011) 3 SCC 545



when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court.

The legislature in its wisdom, made the second proviso, mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.

9. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously."

18. In light of the above-mentioned legal position and for all the reasons aforementioned, this Court does not find any reason to disagree with the orders passed by the learned District Judge (Commercial Court). The present appeal is found to be completely devoid of any merits and is, accordingly, dismissed.

19. No order as to costs.

BHARAT PARASHAR, J

ANIL KSHETARPAL, J

OCTOBER 05, 2026/RW/KT