



2026:DHC:1307-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA(COMM) 272/2025, CM APPL. 28178/2025 & CM APPL.
32007/2025

ARGHA CHATTERJEEAppellant
Through: Ms. Ritika Mitra, Adv.

versus

STATE BANK OF INDIA & ANR.Respondents
Through: Mr. Jeewan Prakash Gupta,
Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **12.02.2026**

C. HARI SHANKAR, J.

1. CS (COMM) 517/2020, instituted by Respondent 1, the State Bank of India, against the appellant and Respondent 2 for ₹17,91,443/-, came to be decreed by the learned Commercial Court by judgment and decree dated 15 April 2023. The judgment and decree were passed after proceeding against the appellant, who was Defendant 1, *ex parte*, noting the fact that the appellant had been served by email as well as WhatsApp and had failed to enter appearance on 25 November 2020.

2. The appellant preferred an application before the learned Commercial Court under Order IX Rule 13 of the Code of Civil



Procedure, 1908¹, for setting aside the aforementioned *ex parte* judgment and decree. It was specifically contended, by the appellant, in the said application, that the appellant had never been served with summons in the suit and was, therefore, unaware of the proceedings therein.

3. The application came to be dismissed by the learned Commercial Court by order dated 29 October 2024. We deem it appropriate to reproduce paras 2 and 7 of the said order, thus:

“2. Ms. Ritika Mitra, Ld. Counsel for the defendant no. 1 namely Argha Chatterjee has submitted that defendant no. 1 was never served any summon of the suit and submitted that the predecessor of this court had wrongly relied upon the report of process server, in accordance with which, the summon to defendant no. 1 were stated to be served vide email and Whatsapp. She has also submitted that the defendant no. 1 is alleged to have been served through email and whatsapp, but from which email, the said summon was sent to the defendant no. 1 on his email, is not mentioned on the summon. She has also submitted that service of summons through email and whatsapp cannot be looked into and she has further submitted that the defendant no. 1 had received the letter dated 23.03.2024 of the Ld. Counsel for the plaintiff on dated 01.04.2024 and the present application under Order 9 Rule 13 of CPC for setting aside the *ex parte* judgment and decree dated 15.04.2023 has been filed on 22.04.2024 and submitted that since the defendant no. 1 was not served summons of the suit, so, the *ex parte* judgment and decree dated 15.04.2023 are liable to be set aside. She has relied upon the judgments *Bhiv Chandra Shankar Morya v. Balu Gangaram Morya & Ors.*², *G.P. Srivastava v. RK. Raizada & Ors.*³, *Robin Thapa v. Rohit Dora*⁴.

7. Since the report of process server reveals that the defendant no. 1 was served through email and Whatsapp on his mobile phone number on dated 25.11.2020, the correctness of email ID and phone number of the defendant no. 1 as mentioned in the said summon, is not disputed in this application under consideration.

¹ “CPC” hereinafter

² (2019) 6 SCC 387

³ (2000) 3 SCC 54

⁴ AIR 2019 SC 3225



The process server has also stated that he had also telephonically informed to the defendant no. 1, so, I have no ground to disbelieve the report of the process server, which reveals that the defendant no. 1 was served summons through email and whatsapp on dated 25.11.2020 for 16.12.2020. But despite of service of the summons to the defendant no.1, he failed to appear in the court on 16.12.2020 and also on subsequent date of hearing and vide order dated 10.02.2021, the defendant no. 1 was proceeded ex parte and exparte judgment was passed on dated 15.04.2023. Since this court has come to the conclusion that there was no infirmity in the services of the summons to defendant no.1 through email and Whatsapp on dated 25.11.2020. Therefore, I am inclined to hold that the fact of pendency of the said civil suit against defendant no. 1, was well within the knowledge of the defendant since 25.11.2020. Therefore, the passing of exparte judgment dated 15.04.2023 also must be within the knowledge of the defendant no. 1, but defendant no. 1 remained negligent in persuing the lis pending against him.”

4. Thus, the learned Commercial Court specifically rejected the appellant’s contention that it had not been served summons in the suit. The learned Commercial Court proceeded on the basis that the appellant had been properly served in the suit and was therefore aware of the proceedings in the suit from 25 November 2020.

5. The appellant assailed the aforesaid order dated 29 October 2024 of the learned Commercial Court before a Division Bench of this court by a way of FAO (COMM) 66/2025. The said appeal stands dismissed by the Division Bench by the following order passed on 4 March 2025:

“FAO (COMM) 66/2025

1. The instant appeal is directed against the order dated 29 October 2024, pursuant to which the application referable to Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 [‘CPC’] has come to be rejected by the Trial Judge.



2. We find that while dealing with the issue of service of summons, the Trial Judge has observed as follows:

“6. The perusal of the record reveals that the process server had reported on the summon that defendant no. 1 was served the summons on his abovesaid email id and also on his whatsapp of abovesaid phone number and he was also telephonically informed by the process server for the next date of hearing, as 16.12.2020, but, on dated 16.12.2020, no one had appeared on behalf of the defendant no. 1 and even on subsequent date, no one had appeared on behalf of the defendant and vide order dated 10.02.2021, the predecessor of this Court was pleased to proceed exparte against the defendant no. 1 and the predecessor of this Court, vide exparte judgment dated 15.04.2023 was pleased to decree the suit of the plaintiff. The present application under Order 9 Rule 13 of CPC has been filed by the defendant no. online on dated 25.04.2024.

7. Since the report of process server reveals that the defendant no.1 was served through email and Whatsapp on his mobile phone number on dated 25.11.2020, the correctness of email ID and phone number of the defendant no. 1 as mentioned in the said summon, is not disputed in this application under consideration. The process server has also stated that he had also telephonically informed to the defendant no. 1, so, I have no ground to disbelieve the report of the process server, which reveals that the defendant no. 1 was served summons through email and whatsapp on dated 25.11.2020' for 16.12.2020. But despite of service of the summons to the defendant no.1, he failed to appear in the court on 16.12.2020 and also on subsequent date of hearing and vide order dated 10.02.2021, the defendant no.1 was proceeded exparte and exparte judgment was passed on dated 15.04.2023. Since this court has come to the conclusion that there was no infirmity in the services of the summons to defendant no. 1 through email and Whatsapp on dated 25.11.2020. Therefore, I am inclined to hold that the fact of pendency of the said civil suit against defendant no. 1, was well within the knowledge of the defendant since 25.11.2020. Therefore, the passing of exparte judgment dated 15.04.2023 also must be within the knowledge of the defendant no.1, but defendant no.1 remained negligent in persuing the lis pending against him.”

3. Although it was sought to be vehemently contended before us that the appellant had stoutly denied the service of summons as



would be evident from the averments which were taken in the rejoinder submission which was filed, we find ourselves unable to sustain that submission for the following reasons.

4. It becomes relevant to note that in the rejoinder submission which was filed before the Trial Judge, the appellant had averred as follows:

“1. That the contents of para No.1 of the Preliminary Objections is wrong, false and denied. It is submitted that the Defendant No.1 was informed by the Plaintiff’s counsel Shri Jeewan Prakash Gupta Advocate vide letter dtd.23.03.2024 about the impugned judgment dtd.15.04.2023 i.e. 01 year after the passing of the ex-parte judgment. That upon receiving the knowledge of the impugned judgment the Defendant No.1 filed the present Application within the stipulated time period. That thus if there is any delay that is on the part of the Plaintiff to inform the Defendant No. 1 about the ex-parte Judgment and there is no delay on the part of the Defendant No.1.

2. That the contents of para No.2 of the Preliminary Objections is wrong, false and denied. It is vehemently denied that the Defendant No.1 was served the summons of this case on 25.11.2020. That upon perusal of the Court file it has been found that a service report dated 25. 11.2020 vis-a-vis service of the Defendant No.1 by one Mr. A. Kumar presumably Ahlmad is on record. That according to the service report dated 25.11.2020 Mr. A. Kumar had sent a photo of the summons by way of e-mail and WhatsApp to Defendant No.1. However, it is not mentioned in the report that from which email id & Mobile Number and at what time such e-mail & WhatsApp was sent. It is also not mentioned in the service report that the e-mail has not bounced back and there is no mention of any screenshot of WhatsApp message showing blue tick to show that the message was delivered to the Defendant No. 1. On the other hand, as per the service report of the Defendant No.2, they were served on 21.11.2020 around 03:23 p.m. by email from the official Court id: nazaratshahdara-ddc@gov.in from the nazarat branch. That in case of Defendant No.1 no service was done through Court’s official id: nazaratshahdara-ddc@gov.in by the Nazarat Branch. That it is a matter of fact that many e-mails from unknown sources go to SPAM or TRASH folders thus it cannot be safely concluded that summons were properly sent by e-mail without adequate proof of it being sent and not bounced back with screenshot.



That the Ld. Predecessor Court ordered the Defendants to be served vide Order dtd. 18.11.2020 by e-mail, fax, telegram, signal and WhatsApp number however did not lay down the procedure for it. That the Ld. Predecessor Court neither verified from Mr. A. Kumar on oath regarding the e-mail id & mobile no. from where the summons were apparently sent to the Defendant No. 1 by email & WhatsApp and at what time and whether the said e-mail has bounced back or not and whether the WhatsApp message shows any blue tick or not to ensure proper service as per High Court rules nor directed Mr. A. Kumar to file an Affidavit of Compliance. Furthermore, the Court did not give any direction to the Plaintiff to serve the Defendants. That on 16.12.2020, the Ld. Predecessor court only noted that the Defendants were served by way of WhatsApp and e-mail without checking or verifying whether the Defendants were properly served or not and on their non-appearance on the next date i.e.10.02.2021 presumed on their not interested in non-appearance that the Defendants were defending themselves and immediately proceeded ex-parte without ensuring service to the Defendants by all modes i.e. speed post, courier, Newspaper citation, Affixation,etc. That the Ld. Predecessor Court acted in a routine manner and dispensed with the process of service without giving any cogent reason.

Even otherwise, as per the service report of Mr. A. Kumar dtd.25.11.2020 only photo of summons was sent to the Defendant No.1 and the Defendant No.1 was not served with the copy of the Plaint and documents. Thus, service without the Plaint & documents cannot be deemed to be a proper service.

It is also relevant to point out that the Plaintiff has obtained the ex-parte judgment dtd.10.02.2021 concealing the material facts that as per the Tripartite Agreement dtd.14.02.2015, the Bank (the Plaintiff herein) ought to pay the amount in instalments to the Developer (Defendant No.2) and said flat/apartment shall be kept as a security for the housing loan granted by the bank (clause No. 2 & 3 (page No.112) and the said flat/apartment be kept in mortgage to the Bank (clause No.2, page No. 113) of the Tripartite Agreement).That thus the Plaintiff has no right to recover the money from the Defendant No.1 who has neither received any possession of flat/apartment from the Defendant No.2 nor any money was paid to him. The adjudication in this matter was not done on merits but in a cursory manner without application of judicial mind. It is



violative of the principles of natural justice if the Defendant No. 1 is not allowed to defend himself and it will result in a miscarriage of justice as every person ought to be given an opportunity to defend himself and no order/ judgment should be passed in the back of parties. Thus, this present Application under Order 9 Rule 13 CPC to set aside the *ex parte* judgment dtd.15.04.2023 is liable to be allowed.”

5. As is manifest from the above, even while filing that response, there was an abject failure to traverse the assertions which were made by the process server. The averments taken in the rejoinder affidavit only sought to question the report of the process server and the e-mail address from which the summons had been issued. In the absence of a positive denial of service, we find no justification to interfere with the order impugned.

6. The appeal, consequently, fails and shall stand dismissed.”

6. Thus, there is concurrence of opinion, by the learned Commercial Court as well as by this Court, that the appellant was served in the suit on 25 November 2020 and that, therefore, no case was made out to set aside the judgment and decree passed *ex parte* against the appellant.

7. The appellant has now sought to challenge the said judgment and decree dated 15 April 2023 by means of the present appeal before this Court with the delay of 658 days, for the condonation of which CM APPL. 28178/2025 has been filed.

8. We have heard Ms. Ritika Mitra, learned Counsel for the appellant, at length on this application.

9. The delay is, clearly, considerable. The Supreme Court has, in ***Government of Maharashtra v. Borse Brothers Engineers &***



*Contractors Pvt. Ltd.*⁵, held that in commercial matters, the Court has to adopt an approach which is qualitatively different from that adopted in non-commercial cases. Delay, if not completely and properly explained, is fatal to an appeal in a commercial proceeding.

10. We have also followed the said view in our judgment in *Casablanca Apparels Pvt Ltd v. Polo/ Lauren Company L.P.*⁶

11. In the present case, the basic error in the appellant's prayer for condonation of delay is in the computation of delay from 23 March 2024, when the appellant claims to have attained knowledge of the passing of the *ex parte* judgment and decree dated 15 April 2023.

12. Such an argument would be available to an appellant who was unaware of the proceedings in the suit and, therefore, also remained unaware of the proceedings of the judgment and decree came to be rendered therein.

13. Though Ms. Mitra has fervently sought to contend that, in fact, her client was unaware of the judgment and decree passed in the suit as the appellant had never been served summons in the suit, this argument is clearly not available to her in view of the concurrent findings in the order dated 29 October 2024 of the learned Commercial Court and 4 March 2025 of the Division Bench of this Court in FAO(COMM) 66/2025 which, having not been challenged, have attained finality.

⁵ (2021) 6 SCC 460

⁶ 2025 SCC OnLine Del 5191



14. Clearly, therefore, the factual situation as it emerges from these orders is that the appellant was aware of the proceedings of the suit from 25 November 2020. If that is the case, the appellant is presumed knowledge of the judgment and decree passed in the suit on 15 April 2023. The appellant cannot, therefore, seek to compute delay in filing the appeal from April 2024.

15. Reckoned from April 2023, there is clearly no explanation as to why this appeal has been filed after an inordinate delay of 658 days.

16. Ms. Mitra sought to place reliance on the judgment of the Supreme Court in *Bhivchandra Shankar More v. Balu Gangaram More*⁷.

17. The issue before the Supreme Court in that case is clearly different from that which arises before us. We may reproduce paras 17 and 18 of the said decision which were emphasised by Ms. Mitra:

“17. As pointed out earlier, an appeal under Section 96 CPC is a statutory right. Generally, delays in preferring appeals are required to be condoned, in the interest of justice, where there is no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay.

18. In the case in hand, Respondents 1 to 13 filed a suit for partition in the year 2007, which was decreed ex parte on 4-7-2008. The appellant and Respondents 14 and 15 filed application under Order 9 Rule 13 CPC and the same came to be dismissed on 6-8-2010. Being aggrieved by dismissal of application under Order 9 Rule 13 CPC, the appellant and Respondents 14 and 15 preferred an appeal under Order 43 Rule 1(d) CPC on 3-9-2010. Of course, the said appeal was pending for about three years and the same was withdrawn on 11-6-2013. Thereafter, on the next day i.e. on 12-6-

⁷ 2019 6 SCC 387



2013, the appellant and Respondents 14 and 15 filed an appeal challenging the ex parte decree and judgment dated 4-7-2008 passed in Regular Civil Suit No. 35 of 2007. It cannot be said that the appellant and Respondents 14 and 15 were grossly negligent in pursuing the matter more so, when the decree was passed in the suit for partition.”

18. The Supreme Court was not, therefore, in *Bhivchandra Shankar More*, concerned with the situation in which, despite summons having been served in the suit, the unsuccessful litigant in the suit chose not to participate in the proceedings and remained quiescent after the judgment and decree in the suit were rendered and woke up only when, more than a year after the said judgment and decree, someone wrote to the said litigant about the passing of the judgment and decree.

19. The issue which is before us in the present application, which is the date from which the limitation is to be computed, was never an issue before the Supreme Court. Ms. Mitra’s contention is that limitation has to be counted from 1 April 2024. We have found that contention to be unsustainable. According to us, limitation would have to be computed from the date of the judgment and decree in the suit which was 15 April 2023, as the appellant was always aware of the proceedings in the suit from 15 November 2020.

20. Accordingly, we find no merit in the application for condonation of delay especially given the fact that this is a commercial appeal and the delay is of 658 days.

21. Accordingly, the application for condonation of delay is



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dismissed. The appeal is also, therefore, dismissed on the ground of delay without going into merits.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 12, 2026

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