



2026:DHC:8617



\$~39

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

%

Date of Decision: 25.09.2026# **CNR No. DLHC010915962025**+ **FAO 318/2025****GIRISH KUMAR**

.....Appellant

Through: Mr. Jatin Rajput, Mr. Sandeep Kumar, Mr. Varun Panwar and Mr. Rajesh Kumar Jha, Mr. Gaurav Tripathi, Ms. Iqra Malik, Advocates

versus

MANISH KUMAR & ORS.

.....Respondents

Through: Mr. Virendra Singh, Advocate for respondent no.1

CORAM:**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT (ORAL)**

1. By way of the present appeal filed under Order XLIII Rule 1(d) read with Section 104 of the Code of Civil Procedure, 1908, (CPC) the appellant assails the order dated 13.10.2025 passed by the learned ACJ-cum-ARC, North, Rohini Courts, Delhi, whereby his application seeking condonation of delay in filing the application for restoration of the suit was dismissed and, consequently, the application under Order IX Rule 9 CPC was also dismissed.

2. The appellant had instituted the suit in the year 2014, seeking relief of permanent and mandatory injunction against the respondents.

Signature Not Verified

Digitally Signed
By: NIJAMUDDIN ANSARI
Signing Date: 01.10.2026
12:59:07

FAO 318/2025**Page 1 of 5**



2026:DHC:8617



The suit was subsequently renumbered as CS SCJ No.35831/2016. The appellant's case is that he had been pursuing the proceedings either personally or through his counsel. During the period when the Courts were functioning substantially through virtual hearings on account of the COVID-19 pandemic, the appellant states that he remained dependent upon his counsel for information regarding the proceedings.

3. The suit was ultimately dismissed for non-prosecution vide order dated 19.08.2023. The appellant claims that he remained unaware of the dismissal and came to know about the same only upon receiving a legal notice dated 10.06.2024, which was received by him in July 2024 in connection with another matter. According to the appellant, he thereafter immediately approached his present counsel and, on 31.07.2024, filed an application under Order IX Rule 9 CPC seeking restoration of the suit.

4. The learned Trial Court, vide the impugned order dated 13.10.2025, declined to condone the delay, observing that the appellant had failed to establish sufficient cause. It was further observed that the appellant had means to ascertain the status of the case and that the explanation furnished by him was vague and unsupported by material. Consequently, the application under Section 5 of the Limitation Act was dismissed and, on the same date, the application under Order IX Rule 9 CPC was also dismissed as being time-barred.

5. Learned counsel for the appellant submits that the learned Trial Court has adopted an unduly technical approach while considering the



2026:DHC:8617



application for condonation of delay. It is submitted that the appellant had been pursuing the suit since its institution in 2014 and that the dismissal occurred after the suit had remained pending for several years. It is further submitted that the appellant had been *bona fide* relying upon his previous counsel and had no reason to believe that the counsel had stopped appearing in the matter without informing him. Learned counsel submits that immediately upon acquiring knowledge of the dismissal, the appellant took steps for restoration of the suit.

6. Learned counsel appearing for respondent No.1, on the other hand, supports the impugned order. It is submitted that the delay of 318 days was substantial and that the appellant had failed to place any material on record to establish that he was prevented from approaching the Court within the prescribed period.

7. This Court has heard the submissions of learned counsel for the parties and perused the record.

8. The issue which arises for consideration is whether, in the facts and circumstances of the present case, the explanation furnished by the appellant constitutes sufficient cause for condonation of the delay in filing the application for restoration of the suit.

9. The appellant's explanation is that during the relevant period he was dependent upon his previous counsel for information regarding the proceedings and that he was not informed that the counsel had stopped appearing in the matter. The appellant has further stated that he came to know of the dismissal only upon receipt of the legal notice in July 2024 and thereafter approached his present counsel and took steps for restoration. Significantly, the record shows that after



2026:DHC:8617



acquiring knowledge of the dismissal, the appellant did take steps for restoration and filed the application under Order IX Rule 9 CPC which is dated 26.07.2024 and he claims was filed on 31.07.2024. Thus, the appellant cannot be said to have remained inactive after acquiring knowledge of the dismissal.

10. The Supreme Court has repeatedly emphasised that while considering an application for condonation of delay, the expression "sufficient cause" should receive a liberal and justice-oriented construction where the explanation is *bona fide* and does not disclose deliberate inaction or lack of good faith. In Collector, Land Acquisition, Anantnag v. Mst. Katiji¹, the Supreme Court underscored that a litigant ordinarily does not stand to benefit by lodging an appeal or application belatedly. Similarly, in Rafiq v. Munshilal², the Supreme Court recognised that a litigant should not, in appropriate circumstances, be made to suffer for the lapse of his counsel when he has acted *bona fide*.

11. In the facts of the present case, the dispute between the parties ought, therefore, to be considered on its merits rather than being brought to an end solely on account of the delay in moving the restoration application.

12. Accordingly, the impugned order dated 13.10.2025 is set aside. The delay of 318 days in filing the application under Order IX Rule 9 CPC is condoned, subject to the appellant paying costs of Rs.2,000/- to the respondents within a period of two weeks from today.

¹ (1987) 2 SCC 107

² (1981) 2 SCC 788



2026:DHC:8617



13. Consequently, the application under Order IX Rule 9 CPC filed by the appellant shall stand allowed and the suit, being CS SCJ No.35831/2016, titled “Shri Girish v. Manish Kumar & Ors.”, shall stand restored to its original position.

14. The matter be listed before the concerned learned Trial Court on 12.10.2026.

15. It is clarified that this Court has not expressed any opinion on the merits of the suit and all contentions of the parties shall remain open for consideration by the learned Trial Court in accordance with law.

16. A copy of the present order be communicated to the concerned learned Trial Court by the Registry.

17. The appeal is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 25, 2026

na