



2026:DHC:7265



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

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Date of Decision: 24.08.2026# **CNR No. DLHC010396162026**+ **FAO 268/2026, CM APPLs. 57058-60/2026**

**NIRMALJEET SINGH** .....Appellant  
Through: **Mr. Varun Gaba, Advocate**

versus

**GULJEET SINGH & ORS.** .....Respondents  
Through: **Mr. Kunal Madan, Advocate**

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT (ORAL)****CM APPL. 57058/2026**

1. Allowed, subject to all just exceptions.
2. The applications are disposed of.

**CM APPL. 57060/2026**

1. The present application has been filed seeking condonation of 24 days delay in re-filing the accompanying appeal. The appellant submits that the appeal was initially filed on 17.07.2026, within the prescribed period of limitation, and that the delay occurred on account of time taken in removing the Registry objections.
2. Learned counsel for the appellant submits that the delay is neither intentional nor deliberate and occurred on account of the appellant's counsel being occupied with professional commitments and



court matters. It is further submitted that the appeal was otherwise filed within the period of limitation.

3. Having regard to the facts and circumstances stated in the application, the delay of 24 days in re-filing the accompanying appeal is condoned.

4. The application is accordingly allowed and disposed of.

**FAO 268/2026 and CM APPL. 57059/2026 (stay)**

1. The present appeal has been preferred by the appellant, who was defendant No.1 before the learned Trial Court, assailing the order dated 26.05.2026 passed in Misc. DJ No.905/2025 in Civil Suit No.620/2020, whereby his application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC), seeking setting aside of the *ex-parte* judgment and decree dated 03.11.2023, came to be dismissed. The appellant also assails the consequential order of the same date whereby the learned Trial Court directed release of a sum of Rs.2,00,000/- along with accrued interest in favour of respondent No.1.

2. The suit, being Civil Suit No.620/2020, was instituted by respondent No.1 seeking damages, permanent injunction and mandatory injunction in respect of property bearing No.17/6, West Patel Nagar, New Delhi-110008. The appellant was arrayed as defendant No.1, while respondent Nos.2 and 3 herein were defendant Nos.2 and 3 respectively. As per the plaint, respondent No.1 was residing on the ground floor of the aforesaid property, whereas the appellant was stated to be residing on the first floor.



3. The grievance raised in the suit was principally with regard to alleged unauthorized construction on the first floor, installation of pipes and consequent seepage causing damage to the ground floor premises. It was further alleged that respondent Nos.2 and 3 had encroached upon the parking area and obstructed the ingress and egress of respondent No.1. It was alleged that despite repeated requests and a PCR call dated 20.10.2020, the aforesaid issues were not remedied.

4. The suit was instituted on 18.11.2020. On account of the prevailing COVID-19 pandemic, summons was sought to be served through electronic mode. The appellant, however, did not enter appearance before the learned Trial Court and was proceeded *ex-parte* along with the other defendants vide order dated 08.06.2022. Respondent No.1 thereafter led *ex-parte* evidence and the suit culminated in the judgment and decree dated 03.11.2023. The learned Trial Court, relying upon the unrebutted evidence led by respondent No.1, decreed the suit and awarded damages of Rs.10,00,000/- besides granting the injunctive reliefs.

5. The appellant thereafter approached the learned Trial Court by way of an application under Order IX Rule 13 CPC. His case was that he had never been served with the summons and had no knowledge of the pendency of the suit.

6. The appellant further stated that he came to know of the *ex-parte* decree only in July 2025 when certain documents were received on his WhatsApp from respondent No.2 in connection with proceedings



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before this Court. He thereafter obtained the relevant record and filed the application under Order IX Rule 13 CPC on 17.09.2025.

7. The learned Trial Court, however, held that the appellant had knowledge of the decree at least on 19.07.2025/22.07.2025 and that the application, having been filed beyond the prescribed period of 30 days, was barred by limitation. It further held that the appellant had not established that he was not duly served, relying, *inter alia*, upon the process server's report regarding service through WhatsApp. The application under Order IX Rule 13 CPC was consequently dismissed.

8. Learned counsel for the appellant submits that the learned Trial Court erred in treating the disputed electronic communication as conclusive proof of service. It is submitted that the appellant had consistently denied receipt of summons and that the process server's report itself records that the mobile number was answered by a third person, namely *Amarjeet Singh*. It is further submitted that the appellant's knowledge of the decree arose only upon the subsequent communication received from respondent No.2 and that the application under Order IX Rule 13 CPC was thereafter filed without undue delay. Learned counsel further submits that the alleged WhatsApp service could not have been treated as sufficient without examining whether the requisite mode of service had in fact been completed in accordance with the applicable directions prevailing during the COVID-19 pandemic. The appellant has specifically relied upon the order dated 10.07.2020 passed by the Supreme Court in *In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No.3 of 2020 by order dated 10.07.2020.*



9. The respondent has opposed the appeal and supported the impugned order.

10. The issue which arises for consideration is whether the material on record establishes due service of summons upon the appellant and, consequently, whether his application under Order IX Rule 13 CPC was rightly rejected as being barred by limitation.

11. The process server's report records that the summons were sent electronically to mobile number 9210894210 and that the call was answered by one *Amarjeet Singh*, who represented himself to be a relative of the appellant and stated that he would intimate him regarding the summons. The report thereafter records that the summons were sent to the said mobile number. The difficulty, however, is that the alleged communication is itself disputed by the appellant. More importantly, the report does not establish that the summons were actually received and brought to the appellant's notice. The mere fact that a particular mobile number was associated with the appellant cannot, in the facts of the present case, by itself establish that the summons were duly served upon him, particularly when the process server's own report records interaction with a third person.

12. In proceedings under Order IX Rule 13 CPC, the Court is required to examine whether the defendant was duly served or, where service is not established, whether sufficient cause prevented his appearance. The question of actual notice assumes particular significance where the defendant has remained completely absent from the proceedings and disputes the very receipt of summons.



13. In the present case, the learned Trial Court principally proceeded on the premise that the appellant's mobile number was used for transmission of the summons and that the appellant could not dispute the mode of electronic service. However, the existence of the mobile number and the factum of transmission are distinct from proof that the summons were actually received by the appellant. The intervening circumstance of the call being answered by a third person, coupled with the appellant's consistent denial of having received the summons, required a more cautious examination. The material placed before this Court does not justify treating the receipt of the WhatsApp communication as equivalent to conclusive knowledge of the summons so as to non-suit the appellant without examining the surrounding circumstances. The appellant's case regarding the manner in which the communication came to his notice cannot be rejected merely on the basis of an inference drawn from the electronic record.

14. The Supreme Court in G.P. Srivastava v. R.K. Raizada<sup>1</sup>, has held that sufficient cause for non-appearance has to be considered in a manner advancing substantial justice, while in Parimal v. Veena @ Bharti<sup>2</sup>, it has been reiterated that the expression "sufficient cause" must be considered on the facts and circumstances of each case and the discretion under Order IX Rule 13 CPC exercised judiciously.

15. At the same time, the Court is conscious that Order IX Rule 13 CPC cannot be invoked merely to reopen an *ex-parte* decree where a defendant had due notice of the proceedings and sufficient opportunity

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<sup>1</sup> (2000) 3 SCC 54

<sup>2</sup> (2011) 3 SCC 545



to appear. The present case, however, turns on whether such notice has been satisfactorily established. On the material before this Court, the circumstances surrounding the alleged electronic service and the subsequent assertion of knowledge create sufficient doubt to warrant an opportunity to the appellant to contest the suit.

16. In the peculiar facts of the present case, the appellant ought not to be deprived of an opportunity to contest the suit on the basis of a disputed mode of service, particularly when he has approached the Court after claiming knowledge of the decree and has expressed his willingness to contest the proceedings. The prejudice caused to respondent No.1 can adequately be addressed by imposing appropriate costs.

17. Accordingly, the present appeal is allowed. The impugned order dated 26.05.2026 is set aside and the application under Order IX Rule 13 CPC is allowed. Consequently, the *ex-parte* judgment and decree dated 03.11.2023 is set aside qua the present appellant/defendant No.1.

18. The appellant shall pay costs of Rs.20,000/- (Rupees Twenty Thousand only) to respondent No.1 within a period of four weeks from today.

19. The consequential order dated 26.05.2026 directing release of Rs.2,00,000/- along with accrued interest in favour of respondent No.1 shall also stand set aside qua the present appellant. The amount, if not already released, shall continue to remain deposited with the learned Trial Court and shall abide by further orders in the suit. In case the amount has already been released, the same shall be subject to



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appropriate orders to be passed by the learned Trial Court in accordance with law.

20. The present appeal, along with pending application(s), is disposed of in the above terms.

**MANOJ KUMAR OHRI, J**

**AUGUST 24, 2026**

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