



2026:AHC:187514-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
FIRST APPEAL No. - 120 of 2020**

.....Appellant(s)

Versus

.....Respondent(s)

Counsel for Appellant(s)	: Arvind Srivastava Iii
Counsel for Respondent(s)	: Rajesh Kumar Srivastava

Reserved
A.F.R.

Court No. - 2

**HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.**

Delivered by Indrajeet Shukla, J.

1. Heard Sri Arvind Srivastava III, learned counsel for the appellant, and Sri Rajesh Kumar Srivastava, learned counsel appearing for the respondent, and perused the original record of the learned Trial Court.
2. The present appeal under Section 19 of the Family Courts Act, 1984 (For brevity Act, 1984) has been instituted by the appellant-plaintiff challenging the validity and correctness of the judgment and order dated 26.11.2019 passed by the learned Additional Principal Judge, Family Court, Ballia, whereby the application filed by the respondent-defendant under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) was allowed and the *ex parte* judgment and decree of divorce dated 17.12.1990 passed by the then Civil Judge, Ballia, set aside.

Factual Matrix

3. In order to examine the rival submissions advanced by the parties, it would be expedient to first take a bird's-eye view of the factual background of the case. It is set out hereinbelow:

3.1. The appellant, _____, and the respondent, _____, tied the nuptial knot in the year 1981 in accordance with Hindu rites and rituals. Thereafter, the appellant-plaintiff instituted a suit for divorce before the Court of the Civil Judge, Ballia, which was registered as Case No. 120 of 1992, titled _____, on the ground of adultery.

3.2 Summons were issued to the respondent-defendant. The order-sheet of Case No. 120 of 1990 dated 13.08.1990 records that the acknowledgment in respect of the summons had been received back, and consequently, the service of summons upon the respondent-defendant was held sufficient. The order dated 13.08.1990 passed by the learned Trial Court in Original Suit No. 120 of 1990 reads:

"वाद पुकारा गया। वादी के अधिवक्ता उपस्थित। प्रतिवादी अनुपस्थित। रजिस्ट्री समन पत्र पावती पत्र आया है। सम्मन तामिल है। 11 ग 2 पर सुना गया। अतः आदेश हुआ कि 11 ग 2 स्वीकृत। प्रतिवादी ने सम्मन की तामिल के बावजूद प्रतिवाद पत्र नहीं दाखिल किया उसके विरुद्ध वाद की कार्यवाही एक पक्षीय रूप से चलाई जाए। एक पक्षीय साक्ष्य हेतु दि० 03-09-90 को पेश हो।"

3.3. The case proceeded *ex parte* and, ultimately, an *ex parte* judgment and decree was passed on 17.12.1990.

3.4. The respondent-defendant moved to set aside the *ex parte* decree dated 17.12.1990, passed in favour of the appellant-plaintiff dissolving their marriage, by filing an application under Order IX Rule 13 CPC, supported by an affidavit. The said application was numbered as Paper No. 4-Ga (2), while the accompanying affidavit was numbered as Paper No. 5-Ga (2), and a Miscellaneous Case bearing No. 220 of 2011 was registered on its basis.

3.5. The appellant-plaintiff was duly put to notice in the miscellaneous case filed under Order IX Rule 13 CPC; however, he failed to appear

before the Court. Consequently, on 04.08.2018, the learned Principal Judge, Family Court, Ballia, passed an order holding the service of summons upon the appellant-plaintiff to be sufficient, which reads as under:

"न्यायालय - प्रधान न्यायाधीश परिवार न्यायालय, बलिया।
मु० नं०-220/11
शिवकुमारी बनाम लालू
दिनांक 04.08.18

पत्रावली पेश हुई। पुकार करायी गयी। पुकार पर
वादिनी मेय विद्वानः अधिवक्ता उपस्थितः। विपक्षी अनुपस्थित।
पत्रावली के अवलोकन से स्पष्ट है कि जरिये रजिस्ट्री पैरवी करने का
आदेश न्यायालय द्वारा पारित किया गया जिसके परिपेक्ष्य में दिनांक
31.05.18 व दिनांक. 09. 07.18 को रजिस्ट्री की गयी रजिस्ट्री रसीद
पत्रावली में संलग्न है तथा साथ में शपथ पत्र प्रस्तुत किया गया है। रजिस्ट्री
भेजे एक माह से अधिक का समय हो चुका है, रजिस्ट्री वापस नहीं आयी।
अतः विपक्षी पर नोटिस का तामिला जरिये रजिस्ट्री पर्याप्त माने जाने योग्य
है। विपक्षी पर नोटिस का तामिला जरिये रजिस्ट्री पर्याप्त माना जाता है।
पत्रावली दिनांक 20.09.18 को, पेश हो."

3.6. The application filed under Order IX Rule 13 CPC does not appear to have been initially accompanied by an application under Section 5 of the Act, 1963, supported by an affidavit. However, the record shows that, subsequently, the respondent-defendant filed a separate application under Section 5 of the Act, 1963, supported by an affidavit, in Miscellaneous Case No. 220 of 2011, which was numbered as Paper Nos. 17-Ga (2) and 18-Ga (2), respectively. The reasons for non-appearance set out in the application filed under Order IX Rule 13 CPC and the assertions made in the application seeking condonation of delay are substantially identical.

3.7. Miscellaneous Case No. 220 of 2011 was heard *ex-parte* after recording service of summon sufficient upon the appellant-plaintiff vide order dated 04.08.2018. The Learned Additional Principal Judge, Family Court, Ballia, allowed the application filed by the respondent-defendant under Order IX Rule 13 CPC numbered as Miscellaneous Case No. 220 of 2011 setting aside the *ex-parte* decree dated 17.12.1990 passed in Original Suit No.120 of 1990, titled as .

3.8. In place of moving an application under Order IX Rule 13 CPC, the appellant-plaintiff resorted the course of filing an appeal under

Section 19 of the Act, 1984 before this Court. The appeal has been admitted to hearing and an order of stay of proceeding was passed. The original record of the case is before us.

3.9. Thus, in place of relegating the appellant-plaintiff back for filing application under Order IX Rule 13 to the trial Court, we hereby proceed to hear the present appeal.

Submission Advanced on Behalf of Appellant

4. The first and foremost submission advanced by learned counsel for the appellant is that the application filed under Order IX Rule 13 CPC was not accompanied by an application seeking condonation of delay when made, and therefore, not maintainable. It is contended that the learned Trial Court committed an error in allowing the application under Order IX Rule 13 CPC without condoning the delay of about 21 years in approaching the Court. The further submission is that the impugned order dated 26.11.2019 was passed *ex parte*, without resorting to substituted service in the manner contemplated under Order V Rule 20 CPC, which is a manifest error of law.

5. The next submission advanced on behalf of the appellant is that, in the absence of an application under Section 5 of the Indian Limitation Act, 1963 (for the brevity 'the Act, 1963') seeking condonation of delay, the statutory mandate contained in Section 3 of the Limitation Act could not have been overlooked or brushed aside. Section 3 expressly provides that, subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

6. It has been emphasized that the summons had been deemed to have been duly served upon the respondent-defendant vide order dated 13.08.1990 passed in Original Suit No.120 of 1990, and therefore, without questioning the validity of order dated 13.08.1990, the application under Order IX Rule 13 CPC ought not have allowed. The Trial Court had committed an error of law in not examining the order

sheet of original suit, particularly the order dated 13.08.1990, by which, the Trial Court deemed service of summons sufficient on the basis of acknowledgment. The *ex-parte* decree subsisting for more than 21 years and, as of today, date when moved to be set aside, and almost 36 years have elapsed by now, ought not have been disturbed in a casual and cavalier manner.

7. The respondent-defendant herself instituted a complaint case under Section 494 IPC, wherein her statement was recorded in which she has unequivocally stated about the second marriage of the appellant-plaintiff. Thus, constructive knowledge of the *ex-parte* decree is to be inferred against the respondent-defendant. Even though she is receiving maintenance for more than three decades, her assertion in the application under Order IX Rule 13 CPC that she was not aware of the *ex-parte* decree prior to 2011 is perjury on the face of the record.

8. The learned Counsel for the appellant submitted that the limitation for recalling an *ex-parte* judgment is 30 days and any application filed beyond the said period is required to explain the delay on day-to-day basis, which is absolutely lacking in the present case. The learned Trial Judge, while passing the order impugned fell in error in not appreciating the acknowledgment, which is the foundation of the order dated 13.08.1990, by which service of summons upon the respondent-defendant was deemed to be sufficient.

9. Learned counsel for the appellant lastly emphasized that the 'sufficient cause' has not been explained by the respondent-defendant, first with respect to non-appearance, and thereafter, about moving a belated application after 21 years. This in absence of 'sufficient cause' set out for her non-appearance, the only inevitable conclusion available with the learned Trial Judge was to reject the application filed under Order IX Rule 13 CPC.

10. To buttress the aforesaid submissions, learned counsel for the appellant has placed reliance upon the following authorities:

(i) **Mahesh Yadav and Another vs. Rajeshwar Singh and others**, (2009) 2 SCC 205.

(ii) **Mahabir Singh vs. Subhash and others, (2008) 1 SCC 358.** In **Mahabir Singh** (*supra*) reliance has been placed on following paragraph of the report:

“8. Thus, even assuming for the sake of argument that no proper step was taken by the appellant herein for service of summons upon the respondent and/or the service of summons was irregular, evidently, it was for the respondent-defendant to establish as to when he came to know about the passing of the ex parte decree. Even in his cross-examination, the first respondent has categorically admitted that he had approached the appellant herein for not giving effect thereto one-and-a-half years prior to filing of the application, and, thus, he must be deemed to have knowledge about passing of the said ex parte decree. The period of limitation would, thus, be reckoned from that day. As the application under Order 9 Rule 13 of the Code of Civil Procedure was filed one-and-a-half years after the first respondent came to know about passing of the ex parte decree in the suit, the said application evidently was barred by limitation.

9. In terms of Section 3 of the Limitation Act, 1963, no court shall have jurisdiction to entertain any suit or application if the same has been filed after expiry of the period of limitation. The High Court could not have ignored the said jurisdictional fact.”

(iii) In **Parimal v. Veena alias Bharti, (2011) 3 SCC 545**, the learned counsel for the appellant has placed reliance upon the following relevant remarks:

“8. Shri M.C. Dhingra, learned counsel appearing for the appellant has submitted that the service stood completed in terms of statutory provisions of CPC by the refusal of the respondent to take the summons. Subsequently, the registered post was also not received by her as she refused it. It was only in such circumstances that the trial court entertained the application of the appellant under Order 5 Rule 20 CPC for substituted service. The summons were served by publication in the daily newspaper National Herald published from Delhi which has a very wide circulation and further service of the said newspaper on the respondent wife by registered post. The High Court committed a grave error by taking into consideration the conduct of the appellant subsequent to the date of decree of divorce which was totally irrelevant and unwarranted for deciding the application under Order 9 Rule 13 CPC. More so, the High Court failed to take note of the hard reality that after two years of the ex parte decree the appellant got married and now has two major sons from the second wife. Therefore, the appeal deserves to be allowed and the judgment impugned is liable to be set aside.

9. On the contrary, Ms Geeta Dhingra, learned counsel appearing for the respondent wife has vehemently opposed the appeal, contending that once the respondent wife made the allegations of fraud and collusion of the appellant with the postman, etc. as he succeeded in procuring the false report, the burden of proof would be upon the appellant and not upon the respondent wife to establish that the allegations of fraud or collusion were false. The conduct of the appellant even subsequent to the date of decree of divorce i.e. not disclosing this fact to the respondent wife during the proceedings under Section 125 CrPC,

disentitles him from any relief before this Court of equity. No interference is required in the matter and the appeal is liable to be dismissed.

10. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

11. The aforesaid provision reads as under:

“13.Setting aside decree ex parte against defendant.—In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided further that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.”

(iv) Learned counsel for the appellant has also relied upon the decision of the Supreme Court in **G.P. Srivastava v. R.K. Raizada and Others, (2000) 3 SCC 54**. The relevant paragraphs thereof are extracted hereinbelow:

“7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any “sufficient cause” from appearing when the suit was called on for hearing. Unless “sufficient cause” is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words “was prevented by any sufficient cause from appearing” must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The “sufficient cause” for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If “sufficient cause” is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.

8. In the instant case, it is not disputed that the nephew of the counsel of the appellant had died in a road accident on the date of hearing and that the appellant himself was not at the station on account of his employment and illness. The mere fact of obtaining a certificate from a private doctor could not be made a basis for rejecting his claim of being sick. Both the trial court as also the High Court have adopted a very narrow and technical approach in dealing with a matter pertaining to the eviction of the appellant despite the fact that he had put a reasonable defence and had approached the Court for setting aside the ex parte decree, admittedly, within the statutory period. Even if the appellant was found to be negligent, the other side could have been compensated by costs and the ex parte decree set aside on such other terms and conditions as were deemed proper by the trial court. On account of the unrealistic and technical approach adopted by the courts, the litigation between the parties has unnecessarily been prolonged for about 17 years. The ends of justice can be met only if the appellant-defendant is allowed opportunity to prove his case within a reasonable time.

9. Under the circumstances, the appeals are allowed by setting aside the order of the High Court and of the trial court. The ex parte judgment and decree passed against the appellant is set aside on payment of costs of Rs 5000 to the other side. The trial court is directed to afford the appellant opportunity to prove his case and expedite the disposal of the suit preferably within a period of six months from the date of receipt of the copy of this order.”

Submissions Advanced on Behalf of Respondent

11. Learned counsel for the respondent-defendant, on the other hand, vehemently submitted that the respondent-defendant is an illiterate lady. It is, however, pointed out that the order-sheet of the original suit for divorce, bearing Case No. 120 of 1990, contains a specific endorsement in the order dated 07.05.1990 that, after reading the summons, the respondent-defendant refused to put her signatures thereon. The order dated 07.05.1990 passed in Original Suit No. 220 of 1990 reads as under:

“वादोत्तर दाखिल नहीं हुआ। समन नजारात से इस रिपोर्ट के साथ वाद आया है कि मुलाकात हुई। समन पढ़कर लेने व दस्तखत बनाने से इन्कार की। अतः आदेश हुआ कि नियत तिथि पर पेश होवे।”

12. Learned counsel for the respondent-defendant submitted that the order dated 13.08.1990, recording service of summons through registered post, does not disclose upon whom the summons was served, nor does it indicate whose signature, or thumb impression appears on the alleged acknowledgment. It was further submitted that even the alternative mode of service, namely, substituted service, was not resorted

to by the Trial Court. Learned counsel further urged that the impugned order does not warrant interference in the appellate jurisdiction of this Court, as the settled principle of law favors adjudication on merits and does not contemplate shutting the doors of hearing on technicalities.

13. The further submission advanced by learned counsel for the respondent defendant is that the application under Order IX Rule 13 CPC was not initially accompanied with an application for the condonation of delay, but later on, the defendant cured the defect by filing a separate application under Section 5 of the Limitation Act, duly supported by Affidavit. The cause for the delay in moving the application for setting aside the *ex-parte* decree has been set out in detail not only in application under Order IX Rule 13 CPC but separately in the Delay Condonation Application too.

14. Learned counsel for the respondent-defendant lastly submitted that the 'sufficient cause' mentioned in the statute must receive a liberal construction. The impugned order dated 26.11.2019, having been passed with a justice-oriented approach, may not be disturbed.

15. To buttress the submissions advanced by learned Counsel for the respondent, reliance has been placed upon the following authorities, *Chandra Kali vs. State of UP and others*, (2019) 10 ADJ 542; *Collector, land Acquisition, Anantnag and another vs. Mst. Katiji and others*, AIR 1987 SC 1353; *Union of India and others vs Shyama Charan Agarwal and Sons. Engineers and builders and others*; *The State of Bihar and another vs. Baba Hansh Construction Pvt. Limited*.

Points for Determination

16. Whether an application under Order IX Rule 13 CPC is necessarily required to be accompanied by a separate application under Section 5 of the Act, 1963 supported by an affidavit, or whether, in the absence of such a formal application, the averments contained in the application under Order IX Rule 13 CPC itself, explaining the delay supported by an affidavit, would constitute sufficient compliance in law?

17. Whether the learned Trial Judge erred in law, in allowing the application for setting aside the *ex-parte* decree without considering and recording a finding on the cause shown for the delay in filing the application to set aside and her non-appearance on the date fixed before the Trial Court?

18. Whether the learned Trial Court erred in law in failing to properly appreciate the order dated 13.08.1990 recording sufficient service of summons on the basis of the acknowledgment returned with the registered letter, without conducting an enquiry as to whether the registered letter had in fact been received by the respondent-defendant herself or by any person duly authorized on her behalf or a family member entitled to receive the summons?

Analysis and Reasoning

19. In the context of the pleadings and the material placed on record, we have heard learned counsel for the parties. It has been brought to our notice that, while admitting the present appeal, further proceedings in Case No. 120 of 1990 were stayed. Consequently, no further proceedings took place before the learned Trial Judge after the *ex parte* decree was set aside.

20. In the aforesaid background, we proceed to examine the impugned judgment and order passed in the present appeal. The operative portion thereof reads:

“मूल पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से स्पष्ट है कि विपक्षी / प्रार्थिनी पर संमन का तामीला जरिये रजिस्ट्री पर्याप्त मानते हुए उसके विरुद्ध एक पक्षीय कार्यवाही का आदेश दिनांक 13.08.90 को पारित किया गया। इस प्रकार यह निविवादित है कि वाद की सुनवाई के दौरान विपक्षी न्यायालय में उपस्थित नहीं हुई और उस पर तामीला मानते हुए वाद की कार्यवाही उसके विरुद्ध एकपक्षीय रूप से अग्रसारित से कियावृत्त होने उसकी अनुपस्थिति में अक्षेपित निर्णय दिनांकित 17.12.90 पारित किया गया।

विधि का यह सुस्थापित सिद्धान्त है कि न्यायालय को यथासम्भव प्रकरण को गुण दोष के आधार पर निर्णीत करने का प्रयास करना चाहिए जब तक कि ऐसा न किये जाने हेतु कोई बाध्यकारी परिस्थिति उपलब्ध न हो। विधि के इस सिद्धान्त को कि प्रत्येक मामले का निस्तारण उभयपक्ष को सुनकर पर्याप्त आधार दिये जाने के उपरान्त गुण दोष के आधार पर निर्णीत किये जाने को दृष्टिगत रखते हुए न्यायालय की राय में प्रार्थिनी को प्रकरण को गुण दोष के आधार पर निर्णीत कराने का एक अवसर दिया जाना न्यायोचित होगा।

अतः प्रकरण के अन्य तथ्य व परिस्थितियों को ध्यान में रखते हुए प्रस्तुत प्रार्थना पत्र अन्तर्गत आदेश 9 नियम 13 जाब्ता दीवानी एकपक्षीय रूप से स्वीकार किये जाने योग्य है।

आदेश

प्रार्थिनी शिव कुमारी देवी की ओर से दिया गया प्रार्थना पत्र अन्तर्गत आदेश 9 नियम 13 जाब्ता दीवानी एकपक्षीय रूप से स्वीकार किया जाता है और मूल बाद सं० 120/90 लल्लू राम बनाम शिव कुमारी देवी में पारित एकपक्षीय निर्णय दिनांकित 17.12.1990 निरस्त किया जाता है, वाद अपने मूल नम्बर पर कायम हो। पत्रावली दिनांक 09.12.19 को पेश हो। ”

21. From a perusal of the record, it transpires that the learned Trial Judge, without advertent even to a single word on the point of limitation, has allowed the application under Order IX Rule 13 CPC. The Trial Court failed to address the cause of delay as mentioned in the application seeking setting aside *ex parte* decree as well as in the Delay Condonation Application.

22. It is a settled law that a Court can exercise jurisdiction only if application or appeal is within limitation or the delay in filing is condoned and the proceedings deemed to be within limitation by fiction of law. But, in the case in hand, the Trial Court had completely brushed aside the point of limitation though, apparently it was clear that application for setting aside *ex-parte* decree had been filed after 21 years.

23. The Supreme Court in **Thirunagalingam vs. Lingeswaran & Anr, 2025 INSC 672** *has held, in clear terms, that delay cannot be condoned merely as an act of generosity*. The relevant remarks in the authority are reproduced hereinbelow:

“28. Since the Respondents assigned the very same reasons in I.A. No. 1 of 2022 in Unnumbered A.S. No... of 2022 as raised in I.A. Nos. 462 of 2018 and 119 of 2019 that had already been dismissed by this Court vide S.L.P. (C) Nos. 2054 & 2055 of 2022, the application for condonation of delay of 1116 days cannot be sustained. This Court in S.L.P. (C) Nos. 2054 & 2055 of 2022, after going through the evidence placed on record, rightly held that the delay has not been properly explained. The relevant portion of the order is reproduced hereunder:

“5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained, and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay

application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

5.1 In the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157, in paragraph 14, it is observed and held as under:

“The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.”

31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

24. In **HD Bora vs. the State of Maharashtra, (1984) 2 SCC 337**, the Supreme Court condoned a massive delay of 30 years but the caveat is

the explanation and cause shown for the delay must pass the muster of sufficient cause which is definitely not a good cause but genuine cause which prevented the litigant to approach the Court in time. The cardinal principle of condonation of delay is, that the cause of delay is to be examined and not the duration/length of the delay.

25. In **Mool Chandra vs Union of India and another, 2024 INSC 577**, the Supreme Court emphasized the cause, rather than the period of delay for deciding the question of condonation. The relevant remarks in **Mool Chandra (supra)** are reproduced hereinbelow:

“No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.”

26. With respect to condonation of delay, this Court calls to mind to the principles laid down in **Collector Land Acquisition, Anantnag Vs. Mst. Katiji and others, AIR 1987 SC 1353**, wherein the Supreme Court has culled out the following principles:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

27. In **N. Balakrishanan Vs. M. Krishnamurthy** reported in (1998) 7 SCC 123 the Supreme court has held that the "Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly". The relevant paragraphs of the said judgment reads:

" 9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

emphasis added

28. The Supreme Court in **Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Sao and others**, (2002) 3 SCC 195 has categorically held that courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of the disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception. The relevant paragraphs of the report in **Ram Nath Sao** (*supra*) read:

" 12. Thus it becomes plain that the expression "sufficient cause" within the meaning of **Section 5** of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly

defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

29. In Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649, the Supreme Court broadly culled out the following principles:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(emphasis supplied)

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into

consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

30. In the recent decision of the Supreme Court in **Surendra G. Shankar & Anr. v. Esque Finamark Pvt. Ltd. & Ors.**, (2025) SCC OnLine SC 134 the Court, while considering the earlier decision in **Ram Kali Devi (Smt) vs. Manager, Punjab National Bank**, AIR Online 1997 SC 567 reiterated that the merits of the matter cannot be gone into unless the delay in filing the appeal is first condoned. The Court emphasised that the question of limitation has to be considered independently and cannot be bypassed merely by referring to the merits of the case.

31. It is well settled that the issue of condonation of delay must be decided before the Court proceeds to pass any interim or substantive order on the merits. Until the delay is condoned, there is, in the eye of law, no constituted appeal, application or suit, having regard to the mandate of Section 3 of the Act, 1963. Thus, for the ready reference Section 3 of the Act, 1963 is reproduced hereinbelow:

3. Bar of Limitation- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,—

(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.”

32. In the present case, the limitation prescribed for the filing of an application for setting aside an *ex parte* decree is admittedly 30 days, whereas the application has been filed after a delay of 21 years. Thus, the failure to examine the sufficiency of cause shown for such an inordinate delay, before proceeding further in the matter, would amount to a jurisdictional error in the order passed by the Trial Court. In **State of West Bengal v. Somdeb Bandyopadhyay, (2009) 2 SCC 694**, the Supreme Court has held:

"7. It is to be noticed that even without condoning the delay and entertaining the writ appeal the High Court has passed a series of interim orders. Such a course is impermissible as the appeal was non est in the eye of the law without it being entertained. Admittedly, the delay in preferring the writ appeal was not condoned at the time when the interim orders were passed. The High Court has committed another error in holding that the writ petition was dismissed principally on the ground that it was the decision of the governing body as to who should be its Secretary, although government approval is necessary for appointment of the Secretary of the governing body of the institute. On the contrary, the learned Single Judge dismissed the writ petition principally on the ground that factual controversy is involved. The Division Bench has not discussed this aspect at all. Therefore, the order is clearly indefensible."

33. Delay of a few days cannot be condoned if sufficient cause is not disclosed explaining it, but even a massive delay may be condoned if reasons pass the muster of ‘sufficiency of cause’.

34. The Trial Court appears to have been swayed by the principle that Courts should ordinarily lean in favour of adjudication on merits rather than shutting out a party on technicalities, and that every endeavour should be made to decide the *lis* on its merits. There can be no quarrel with the aforesaid cardinal principle; however, the law of limitation is founded on considerations of public policy, certainty and finality of litigation, embodied in the maxim *interest reipublicae ut sit finis litium*. Thus, the plea of limitation cannot be completely disregarded. Limitation is not a mere technical defence; once the prescribed period expires, the remedy becomes barred unless the delay is condoned by the Court upon being satisfied that sufficient cause has been shown, wherever the provisions of the Limitation Act are applicable.

35. The learned Trial Judge did not address the grounds raised by respondent-defendant by which she has disputed the service of summons. Order IX Rule 13 CPC contemplates that in any case in which a decree is passed *ex-parte* against a defendant, he may apply to the Court by which the decree was passed to set it aside; and if he satisfies the Court that *the summon was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing* the Court shall make an order setting aside the decree as against him upon such terms as to costs by payment into Court or otherwise as it thinks fit and shall appoint a day for proceedings with the suit.

36. The *sine qua non* for exercise of jurisdiction under Order IX Rule 13 CPC is non service of summons or prevention by any sufficient cause in appearance before the Court. Unless these twins' conditions, though in alternate, are satisfied, no *ex-parte* decree can be set aside. The respondent-defendant laid emphasis on the first limb that "summons were not duly served" upon her as reflected from her application filed under Order IX Rule 13 CPC. Thus, it was incumbent upon the learned Trial Judge to enter into an enquiry whether the fiction of law about service recorded in order dated 13.08.1990 can be sustained by examining the acknowledgment which is on record. The inquiry must further determine whether the acknowledgment received back fulfills the

criteria under the law for construing such service sufficient. The learned Trial Judge had not entered into any such enquiry. Particularly, whether the acknowledgment available on record constitutes service of summons or not.

37. The Court dealing with time barred application, suit, appeal, revision, as the case may be, where application of Limitation Act has not been excluded, the Court is required to first deal with point of limitation and if question of limitation finds favour of the party seeking such condonation, then only Court can treat the proceedings within the prescribed limitation by fiction of law and not otherwise. Section 5 of the Act, 1963 reads as:

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

38. The first question does not arise for our consideration in the present case, as a perusal of the record demonstrates that, at a subsequent stage, the respondent-defendant did file a separate application seeking condonation of delay. Nevertheless, the legal position on the issue is no longer *res integra* in view of the judgment of the Supreme Court in **Dwarka Prasad (D) through LRs v. Prithviraj Singh**, arising out of SLP (Civil) No. 11259 of 2022, in which it has been held by the Supreme Court that a separate application for condonation of delay is not required while moving an application under Order 9 Rule 13 CPC, if sufficient explanation emerges from a bare reading of application itself. The relevant observation in **Dwarka Prasad** (*supra*) read:

“9. We have heard learned counsel for the appellant and perused the record. We are of the opinion that the High Court has erred in upholding the order of the Additional District Judge. The Trial Court had rightly allowed the restoration application filed by the Appellant under Order IX Rule 13 of CPC. It is well settled that Courts should not shut out

cases on mere technicalities but rather afford opportunity to both sides and thrash out the matter on merits. Further, we cannot let the party suffer due to negligent or fault committed by their counsel. This principle has been enunciated by this court in the case of *Rafiq v. Munshilal*, quoted as follows:

“3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order.....”

39. The aforesaid principle also finds support from the judgment of the Supreme Court in **Bhagmal and Others v. Kunwar Lal and**

Others, 2010 (12) SCC 159, wherein, while considering an application under Order IX Rule 13 CPC, the Supreme Court held that where the explanation for delay is intrinsically connected with the merits of the application, the same cannot be considered in isolation or by adopting a hyper-technical approach. The relevant remarks in **Bhagmal (supra)** read:

“12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice.”

40. The peculiar facts of the present case are that the appellant-plaintiff is fighting tooth and nail to defend the *ex parte* judgment and decree dated 17.12.1990, whereas the respondent-defendant is also endeavouring to sustain the *ex parte* order dated 16.11.2019. Thus, both the aforesaid *ex parte* determination, though made at different stages of the proceedings, are sought to be defended by the respective parties; one by the appellant-plaintiff and the other by the respondent-defendant.

41. It is indeed a peculiar and unfortunate situation that both parties seek to derive advantage from orders passed *ex parte*, and the Court is

called upon to examine which of the two orders would advance the cause of justice. In view of the aforesaid peculiar factual matrix, the Trial Court is directed to examine the effect and legal consequences of the aforesaid orders afresh, keeping in view the observations and findings recorded hereinabove, and thereafter pass an appropriate order in accordance with law, which may best subserve the ends of justice.

42. The condonation of delay is not automatic. It hinges upon judicial discretion about a satisfactory explanation for the delay. Thus, it is incumbent upon the Trial Court to first pass an order on the point of limitation, and, thereafter, address the contents of application seeking setting aside the *ex parte* decree; a well reasoned order may then be passed in accordance with the statutory mandate of Order IX Rule 13 CPC. The learned Trial Judge ought have borne in mind that he was required to Judge, the sufficiency of cause for non appearance as well as the delay in moving the application for setting *aside the ex parte* decree and could certainly not be swayed by a superficial consideration of the length of delay. It would have to contemplate on the reason for the delay and non-appearance. In any view of matter, adequate opportunity of being heard should have been afforded to the parties and material placed thrashed out by taking a holistic and justice oriented view.

43. The order passed by trial Court is completely cryptic and laconic, as it does not record any satisfaction with respect to explanation for the delay and further there is no remark/mention that whether summons were duly served or not, before it proceeded to pass the *ex-parte* decree dated 17.12.1990. In absence of an enquiry on these two vital issues, the impugned order passed by the Trial Court cannot be sustained in the eyes of law, and is, therefore, hereby set aside. The application filed by the respondent-defendant under Order IX Rule 13 CPC bearing Misc. Case No.220 of 2011 coupled with the application seeking condonation of delay bearing Paper No. 17-Ga (2) are hereby restored to the file of the Trial Court for a decision afresh in accordance with law, with expedition, within the maximum period of **two months**, in the light of remarks and observations made in this judgment.

44. The appeal is, accordingly, **allowed** in the aforesaid terms. There shall be no order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

September 08, 2026

Mohit

Whether the order is speaking : Yes
Whether the order is reportable : Yes