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

% *Date of Decision: 03rd November,2026*

\# **CNR No. DLHC010735732023**

\+ CS(COMM) 46/2024

THE ARYAN EDUCATIONAL SOCIETY .....Plaintiff

Through: Mr. Varun Singh, Mr. Mohammad Atif and Ms. Somesha Gupta, Advocates.

versus

AARYAN INTERNATIONAL SCHOOL .....Defendant

Through: Mr. Vikram Singh Dalal and Mr. Pankaj Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

I.A. 12420/2025 *(u/O IX Rule 13 r/w Section 151 CPC on behalf of Defendant)* and
I.A. 12419/2025 *(u/S 5 of the Limitation Act,1963 r/w Section 151 CPC on behalf of Defendant)*

1. This judgment will dispose of both the applications filed on behalf of the Defendant, one under Order IX Rule 13 read with Section 151 CPC for setting aside *ex parte* judgment and decree dated 25.10.2024 and the other for condonation of delay in filing the application for setting aside the *ex parte* decree.

2. Present suit was filed by the Plaintiff seeking decree of permanent injunction restraining the Defendant and all others acting on its behalf from operating a school or any other institution with similar services using the

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impugned marks ‘Aaryan International School’ and 

and/or any other mark deceptively similar to Plaintiff’s registered marks 

and 

. Plaintiff is an educational institution and runs a school in the name of ‘The Aryan School’ situated in Dehradun, which is an internationally renowned English medium day boarding school and is the registered proprietor of the aforesaid two trademarks in Class 41. Addtionally, Plaintiff is the registrant of the domain name www.thearyanschool.com, which provides a platform for parents and students to receive information about the school. Aggrieved by the adoption of the impugned marks by the Defendant, which is a school by the name of ‘Aaryan International School’, Plaintiff filed the suit for restraining the Defendant from infringing its registered trademarks, alleging that the rival marks were deceptively similar.

3. Summons were issued in the suit on 18.01.2024 and were served on the Defendant through speed post on 02.02.2024, as recorded by the learned Joint Registrar in order dated 18.03.2024, however, there was no appearance on behalf of the Defendant on the said date. Learned Registrar directed filing of the written statement as per rules and matter was placed before Court for 23.04.2024, the date already fixed. On 23.04.2024, matter was renotified for 02.09.2024, on which date application filed by the Plaintiff under Order VIII Rule 10 CPC being I.A. 38131/2024 was listed. Since there was no appearance on behalf of the Defendant and no written statement was filed

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within the maximum period of 120 days, Defendant's right to file written statement was closed and it was set *ex parte.* Defendant neither took steps for setting aside order dated 02.09.2024 nor joined proceedings thereafter and thus on 25.10.2024, Court passed an *ex parte* decree of permanent injunction in favour of the Plaintiff in terms of prayer clauses (a), (b), (c), (d) and (e) of the plaint and awarded damages and costs amounting to Rs. 5,00,000/-.

4. Subsequently, Defendant filed the present applications in which notice was issued on 15.05.2025. Case of the Defendant in the application for setting aside the judgement/decree is that Defendant learnt of the *ex parte* judgment/decree only on 14.02.2025 when the Local Commissioner, appointed by the Court vide order dated 06.02.2025 in execution petition Ex. P. 16/2025, visited the premises of Defendant's school and apprised of the decree. This came as a surprise to the Defendant since its Authorized Representative/Authorized Signatory, in consultation with the Chairperson of the School, had engaged Mr. Jati Ram, Advocate in March, 2024 and executed a *vakalatnama* in his favour, authorising him to represent the Defendant in the suit and to do all acts relevant and necessary to defend the suit. On being engaged, counsel had assured that he shall appear in the suit as and when the matter was listed and will keep the Defendant updated on its status as also call upon the representatives of the Defendant for comments/assistance, whenever required. In fact, Mr. Jati Ram, regularly reassured the Defendant that there was nothing to worry as he and his office associates were handling the matter and there was no reason for the respresentatives of the Defendant to disbelieve the counsel.

5. Defendant states that no one knew or was informed that the counsel hired for defending the suit was not appearing in the matter, contrary to his

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assurances or even that an *ex parte* decree had been passed in favour of the Plaintiff. On learning of the *ex parte* decree through the Local Commissioner, Defendant's representative immediately contacted Mr. Jati Ram to find out the reason for his non-appearance and making false representation to the Defendant and in response, counsel informed that he could not appear and keep track of the case owing to his ill health and that he had assigned the matter to his office associates, who also failed to keep track of the matter. Therefore, there was complete negligence and carelessness on the part of the counsel and his office, for which Defendant cannot be blamed.

6. It is further stated that since the suit was decreed *ex parte* due to the fault of the counsel, Defendant's representative requested Mr. Jati Ram to take remedial steps and he assured that an appeal shall be filed, but even the draft of the appeal was not shared, despite repeated requests and follow ups. Realising that the counsel was not taking the matter seriously and his earlier negligence and carelessness had gravely prejudiced the Defendant, it was decided by the management to engage a new counsel. Accordingly, the present counsel was engaged, who after receiving the necessary documents and instructions on merits of the case, filed the present applications.

7. Learned counsel for the Defendant submits that Defendant was prevented by sufficient cause from appearing in the matter and thus the *ex parte* judgement and decree be set aside. On receipt of summons, Defendant took immediate steps to engage Mr. Jati Ram, Advocate, for defending the suit as the allegations of infringement of Plaintiff's trademarks were false. Defendant was all through under a *bona fide* impression that Mr. Jati Ram was appearing in the matter and taking all necessary steps to defend the suit, since each time an update was sought, he assured that there was nothing to

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worry. It was only when Defendant learnt of the *ex parte* decree through the Local Commissioner and confronted Mr. Jati Ram, that he admitted that he had not appeared on the various dates due to his ill-health but even then rendered no explanation for not informing the Defendant, which had bestowed complete trust in the counsel. Since non-appearance of the Defendant was due to negligence of the counsel, Defendant should not suffer for his fault. It was strenously urged that it is no longer *res integra* that clients should not suffer for the negligence and fault of their counsels and to buttress this plea, reliance was placed on the judgment of the Supreme Court in ***Secretary, Department of Horticulture, Chandigarh and Another v. Raghu Raj, (2008) 13 SCC 395,*** where it was held that when a party engages an advocate, who is expected to appear at the time of hearing but fails to so appear, normally, a party should not suffer on account of default or non-appearance of the advocate. Reliance was also placed on an earlier judgment of the Supreme Court in ***Rafiq and Another v. Munshilal and Another, (1981) 2 SCC 788,*** for the said legal proposition.

8. Learned counsel for the Defendant further submitted that recently in ***Dwarika Prasad (D), thr. LRs v. Prithvi Raj Singh, 2024 SCC OnLine SC 3828,*** the Supreme Court set aside the judgment of the High Court upholding the order of the Additional District Judge, who had set aside the order of the Trial Court, allowing the application under Order IX Rule 13 CPC, observing that Courts should not shut out cases on mere technicalities but rather afford opportunity to both sides and thrash out the matter on merits and thus reiterated and reaffirmed the law laid down in ***Rafiq (supra).*** To further support its case that there was 'sufficient cause' which prevented the Defendant from appearing in the suit proceedings, learned counsel brought forth that husband of the Chairperson of the Defendant was made

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co-accused in FIR No. 191/2023 registered at PS: Mohan Garden, Delhi and was arrested on 30.11.2024, owing to which Defendant could not closely follow up the matter with the counsel.

9. In so far as the application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 196 days in filing accompanying application under Order IX Rule 13 CPC is concerned, learned counsel for the Defendant submitted that the delay was *bona fide* and for reasons beyond the control of the Defendant and in support reiterated that Defendant learnt of the decree only on 14.02.2025, when the Local Commissioner visited the premises of the Defendant and blamed the counsel Mr. Jati Ram for non-appearance, non-filing of written statement and keeping the Defendant in the dark about the passing of the decree. In totality of these facts and circumstances, it was prayed that delay be condoned and the *ex parte* judgment and decree be set aside, permitting the Defendant to contest the suit on merits.

10. Arguing on behalf of the Plaintiff, basis the replies filed to the applications, Mr. Varun Singh, learned counsel argued that the applications deserves to be outrightly rejected being devoid of merit. Defendant was completely aware that Plaintiff was instituting the suit since Plaintiff had effected advance service upon the Defendant through email at email address aaryaninternationalschool@yahoo.com, given on the website of the school and ought to have followed up the matter. On 18.01.2024, summons were issued in the suit and notice was issued in the application for interim injunction and admittedly, summons and notice were served on the Defendant through speed post on 01.02.2024 and through email on 15.02.2024. Learned Registrar recorded in the order dated 18.03.2024 that Defendant was duly served but there was no appearance, despite service.

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Since written statement was also not filed within the maximum condonable period, Plaintiff filed an application under Order VIII Rule 10, which was listed on 02.09.2024. On the same date, Defendant's right to file written statement was closed and owing to non-appearance, Defendant was set *ex parte,* but no steps were taken by the Defendant for recall of the said order and Court rightly decreed the suit.

11. It was also submitted that after the decree was passed, Plaintiff sent a notice on 21.11.2024 to the Defendant seeking compliance, however, the same was ignored and Defendant continued to infringe Plaintiff's registered trademarks, despite permanent injunction, leading to the filing of the execution petition, wherein Local Commissioner was appointed and vide order dated 24.04.2025, Court granted two weeks to the Defendant to comply with the judgement, failing which the Chairperson of the school would remain present in Court. It is only after this order was passed and as a counter blast, present applications were filed by the Defendant belatedly, for setting aside the decree and condonation of delay, with an intent to delay and obstruct the execution of the decree.

12. It was urged that the scope of jurisdiction of the Court while deciding an application under Order IX Rule 13 CPC is restricted to enquiring whether summons were duly served on the Defendant and/or whether Defendant was prevented by 'sufficient cause' from appearing when the suit is called for hearing and Defendant has failed to establish both these grounds. Defendant's entire story rests on the alleged negligence of its previous counsel Mr. Jati Ram, but there is no independent or corroborative documentary evidence to establish the alleged negligence and while it is trite that a client should not suffer for the fault of his counsel, it is equally settled that litigant cannot wrongly and falsely shift the blame on the counsel

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without credible evidence to support the allegation of negligence. In fact, on the record of the case, as it stands today, Defendant has not even placed material to prove the engagement of Mr. Jati Ram as its counsel in the form of *vakalatnama* or proof of payment of professional fee or any *inter se* communication or correspondence and admittedly, no complaint has been filed with the Bar Council against him. All these factors are pointers to the fact that no counsel was engaged by the Defendant and the averments in the application for setting aside the decree are false and fabricated to the knowledge and belief of the authorised signatory of the Defendant and the story of alleged negligence of the counsel is only to cover up Defendant's conscious decision to stay away from the proceedings and consequently, no ground is made out for setting aside the *ex parte* decree.

13. Without prejudice, it was asserted that assuming the counsel was engaged and was negligent in taking necessary steps in defending the suit, as a party to the suit for infringement, Defendant had a duty to be diligent and vigilant in defending the case and could not place the responsibility entirely on the counsel. As per Defendant's own claim in the application, counsel was engaged in first week of March, 2024 and if this is to be believed, the *ex parte* decree was passed on 25.10.2024 i.e. after seven months and it is highly improbable and unbelievable that a commercial entity of Defendant's stature will not follow up the matter with the counsel for several months to ascertain the status of the case or not take steps to search the website of this Court, since all orders and judgements including the status of each case are uploaded.

14. To support his arguments, learned counsel relied on the judgement in ***Rajneesh Kumar and Another v. Ved Prakash, 2024 SCC OnLine SC 3380,*** where the Supreme Court rejected litigant's attempt to put the blame

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on his counsel observing that over a period of time a tendency has emerged that litigants blame their lawyers and allege negligence and carelessness in attending the proceedings before the Court and assuming that a lawyer is negligent in a given case, this by itself cannot be a ground to condone the delay and/or restitute the proceedings, inasmuch as the litigant also owes a duty to be vigilant in prosecuting his own rights. In ***Hameed Joharan (Dead) and Others v. Abdul Salam (Dead) by LRs. And Others, (2001) 7 SCC 573,*** the Supreme Court held that Courts should not tolerate an indolent litigant since delay defeats equity. Reliance was also placed on the judgments in ***Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., 2017 SCC OnLine Del 8491*** and ***Hira Sweets & Confectionary Private Limited and Others v. Hira Confectioners, 2021 SCC OnLine Del 1823,*** for the said legal proposition.

15. Heard learned counsels for the parties and examined their rival submissions.

16. Present applications are filed by the Defendant in a suit filed by the Plaintiff for restraining the Defendant from infringing its registered trademarks on the ground that the impugned marks are deceptively similar. Summons were issued in the suit on 18.01.2024 and were admittedly served on the Defendant. The entire case of the Defendant for setting aside the *ex parte* decree is predicated on the alleged negligence and inaction/omissions of Mr. Jati Ram, advocate, who was purportedly engaged to represent the Defendant in the suit. However, the averments of negligence and carelessness in paragraphs 5 and 6 of the application under Order IX Rule 13 CPC are unsubstantiated. There is no material on record to corroborate the allegations of negligence, dereliction of duty or professional misconduct on the part of the counsel. Significantly, there is no document to establish that

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the counsel was, in fact, engaged, instructed or duly authorised by the Defendant to appear or act on its behalf. No *vakalatnama,* letter of engagement, written instructions, correspondence or any other contemporaneous document has been placed on record to establish the alleged professional engagement. In these circumstances, the very foundational premise of the allegation, namely, the existence of advocate-client relationship, is not established and *sans* proof that Mr. Jati Ram was entrusted with the case to represent the Defendant, question of attributing negligence, professional lapse or misconduct to the counsel does not arise.

17. Proviso to Order IX Rule 13 CPC allows a Defendant, against whom a decree is passed *ex parte* to apply to the Court to set aside the decree, subject to satisfying the Court either that there was no due service of summons in the suit or that Defendant was prevented by sufficient cause from appearing when the suit was called for hearing. Second Proviso proscribes the Court from setting aside an *ex parte* decree on the sole ground that there has been irregularity in service of summons, if the Court is satisfied that Defendant had notice of the date of hearing and had sufficient time to appear and answer the case set up by the Plaintiff. In ***Parimal v. Veena alias Bharti, (2011) 3 SCC 545***, the Supreme Court succinctly interpreted the term 'sufficient cause' as follows:-

> ***"13.*** *"Sufficient cause" is an expression which has been used in a large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the*

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facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. (Vide Ramlal v. Rewa Coalfields Ltd. [AIR 1962 SC 361] , Lonand Grampanchayat v. Ramgiri Gosavi [AIR 1968 SC 222] , Surinder Singh Sibia v. Vijay Kumar Sood [(1992) 1 SCC 70 : AIR 1992 SC 1540] and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [(2010) 5 SCC 459 : (2010) 2 SCC (L&S) 50 : (2010) 2 SCC (Cri) 1291 : (2010) 2 SCC (Civ) 448])"

18. In the instant case, Defendant admits service of summons and there is no averment in the application that 'sufficient time' was not available to appear. On the contrary, the averment is that counsel was engaged, who repeatedly assured that he was appearing in the matter and taking care of the suit. Plaintiff is also right that going by Defendant's stand that counsel was engaged in first week of March, 2024, looking at the fact that the *ex parte* decree was passed on 25.10.2024 i.e. after a period exceeding seven months, it is unbelievable that an entity like the Defendant will not follow up with the counsel to ascertain the status of the suit and seek update for over seven months. Apart from engaging the counsel, if any, Defendant owed a duty to be vigilant of his rights and diligently follow up the proceedings in Court, which it failed to do. In today's age when the case status and orders/judgments are uploaded on the website of the Court, Defendant cannot claim that it was unaware of case status and/or non-appearance of the counsel, if any, and/or of non-filing of the written statement or the order whereby Defendant was set *ex parte.* Accordingly, the plea of alleged negligence of the counsel deserves to be rejected as an afterthought and an attempt to shift the responsibility of Defendant's own failure to diligently pursue and defend the proceedings. Defendant has failed to establish sufficient cause for its non-appearance within the meaning of Order IX Rule 13 CPC and the application being devoid of merit, deserves dismissal.

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19. Courts have consistently condemned the practice of litigants placing the entire blame on the counsels without concrete proof of negligence and on mere conjectures and held that in addition to engaging counsels, litigants owe a duty to be vigilant of their rights and prosecute their cases diligently. In ***Rajneesh Kumar (supra),*** the Supreme Court held as follows:-

> *"**10.** It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.*
>
> ***11.** In the aforesaid context, we may refer to a decision of this Court in the case of Salil Dutta v. T.M. & M.C. Private Ltd., (1993) 2 SCC 185, wherein this Court observed as under:—*
>
> > *"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [(1981) 2 SCC 788 : AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing*

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is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted."

(Emphasis supplied)"

20. In ***Moddus Media (supra),*** this Court held as follows:-

*"**12.** In these presents, the allegation of the appellant-defendant company is that their lawyer has stopped appearing after 10-11-2014. It is also alleged that after the impugned judgment and decree dated 31-8-2015, their lawyer told them that the suit of the respondent-plaintiff company has been dismissed and they requested to supply them copies of order and decree. These allegations are not found mentioned in the complaint lodged with the Bar Council of India. If their lawyer stopped appearing from 10-11-2014, the appellant-defendant company should have contacted their lawyer or engaged some other one in the matter or at least they should have started appearing in person but they did not bother to inquire from their previous counsel as to why he stopped appearing w.e.f. 10-11-2014. If they were informed by their counsel after the decision in the suit and copy of order was not supplied, they should have gone to lawyer personally or to court to obtain copies of orders or should have taken assistance of other lawyer. But they were not serious at all.*

***13.** The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a (P) Ltd. Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court*

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so as to find out what orders are passed by the court is liable to bear the consequences.

14. *In a case before Division Bench of this court in Man Singh (deceased) through L. Rs. v. Gaon Sabha Jindpur (2012) 4 ILR (Del) 50, it was contended that the appellants were under the bonafide impression that the matter is being properly looked after by the counsel. It was held that the litigant has to be vigilant and he should contact and take part in the proceedings with due diligence and if negligence on the part of the litigant is established in a particular case, then the courts are not to come to the rescue of such applicants. The Division Bench of this court has also cited a decision of the Supreme Court, which reads as under:*

> *"7. The Supreme Court in Hameed Joharan v. Abdul Salam, (2001) 7 SCC 573 2001 Ind law SC 21137 made the following observations:*
>
> > *"……..It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times : even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim vigilantibus et non dormientibus jura subveniunt (the law assists those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of rights……""*

21. It will be useful in this context to allude to the judgment of this Court in ***Hira Sweets (supra),*** relevant passages of which are as follows:-

> *"**14.** In Sudarshan Sareen case [Sudarshan Sareen v. National Small Industries Corpn. Ltd., 2013 SCC OnLine Del 4412] , a Division Bench of this Court while holding that the appellant therein, was wilfully negligent in not appearing and thus rejecting his prayer for setting aside of an ex parte decree, relied on the following passage in Parimal v. Veena [Parimal v. Veena, (2011) 3 SCC 545] , where the expression "sufficient cause" was interpreted as under:*
>
> > *"13. 'Sufficient cause' is an expression which has been used in a large number of statutes. The meaning of the word 'sufficient' is 'adequate' or 'enough', inasmuch as may be necessary to answer the purpose intended. Therefore, word 'sufficient' embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, 'sufficient cause' means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and*

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circumstances of a case or the party cannot be alleged to have been 'not acting diligently' or 'remaining inactive'. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. (Vide Ramlalv. Rewa Coalfields Ltd. [Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361], Lonand Grampanchayat v. Ramgiri Gosavi [Lonand Grampanchayat v. Ramgiri Gosavi, AIR 1968 SC 222], Surinder Singh Sibia v. Vijay Kumar Sood [Surinder Singh Sibia v. Vijay Kumar Sood, (1992) 1 SCC 70] and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn., (2010) 5 SCC 459])

* * *

15. While deciding whether there is sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. (Vide State of Bihar v. Kameshwar Prasad Singh [State of Bihar v. Kameshwar Prasad Singh, (2000) 9 SCC 94] , Madanlal v. Shyamlal [Madanlal v. Shyamlal, (2002) 1 SCC 535] , Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. [Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd., (2002) 3 SCC 156] , Ram Nath Sao v. Gobardhan Sao [Ram Nath Sao v. Gobardhan Sao, (2002) 3 SCC 195] , Kaushalya Devi v. Prem Chand [Kaushalya Devi v. Prem Chand, (2005) 10 SCC 127] , Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd. [Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd., (2005) 13 SCC 95] and Reena Sadh v. Anjana Enterprises [Reena Sadh v. Anjana Enterprises, (2008) 12 SCC 589] .)

16. In order to determine the application under Order 9 Rule 13CPC, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application."

15. *Recently, the Supreme Court in A. Murugesan v. Jamuna Rani [A. Murugesan v. Jamuna Rani, (2019) 20 SCC 803] affirmed its earlier view in G.P. Srivastava v. R.K. Raizada [G.P. Srivastava v. R.K. Raizada, (2000) 3 SCC 54] , which is reproduced as under:*

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"7. Under Order 9 Rule 13CPC 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."

16. *In the present case, although the defendant has blamed her counsel for his non-appearance which resulted in passing of the decree however, a perusal of the judgment dated 1-2-2019 would show that the same was passed after considering the merits of the case.*

17. *A perusal of the case record would show that the defendant had applied for a certified copy of the decree on 29-5-2019 which admittedly, was received by her on 18-7-2019. The defendant has failed to state that after becoming aware of the passing of the ex parte decree on 18-7-2019, what steps were taken by it to seek setting aside of the same. It appears that the defendant rather preferred to sit over it. The captioned applications came to be filed on 19-10-2020, only after the plaintiffs filed the execution petition.*

18. *The Supreme Court in decisions relied by learned counsel for the defendant has held that a party should not suffer from the inaction, deliberate omission or misdemeanour of his agent. However, the facts in present case show that after becoming aware of the ex parte decree on 18-7-2019, the defendant took no steps against its counsel for more than 14½ months i.e. till 6-10-2020 when a complaint was stated to be filed and*

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that too, two weeks prior to the filing of the captioned applications. In the opinion of this Court, the action taken seems to be only an afterthought with the aim of filing the present application.

19. *Insofar as the delay of 582 days in filing the application is concerned, the defendant has sought to explain the same by claiming that some settlement talks were going on between the parties. The defendant has also relied upon certain medical documents of the son and mother of the defendant's proprietor.*

20. *During the course of arguments, learned counsel for the plaintiffs strongly denied the claim of any settlement talks. The defendant failed to put any supporting document in this regard. The defendant's reliance on the medical documents of the son of the defendant's proprietor is of no use as the same pertained to the year 2018 i.e. before passing of the decree. The mother of the defendant's proprietor is also stated to have expired on 20-4-2019. It is noted that the abovementioned events occurred prior to 29-5-2019 and as such, do not provide any justifiable explanation to the delay of 582 days in filing the application or at least, the delay from 18-7-2019 when the defendant admittedly, became aware of passing of the ex parte decree.*

21. *In the opinion of this Court, the defendant has failed to show any "sufficient cause" for its absence in the Court on the material dates. The defendant has also failed to satisfactorily explain the delay of 582 days in filing the captioned application. The explanation given by the defendant is only an eyewash.*

22. *Accordingly, this Court is not inclined to accept the explanation provided by the defendant. Consequently, the captioned applications are dismissed."*

22. There can be no quarrel on the proposition of law laid down by the Supreme Court in the decisions relied upon by counsel for the Defendant that a party should not suffer for the inaction or deliberate omission or negligence of an advocate, however, these judgments do not aid the Defendant in the absence of any material establishing the engagement of the counsel named in the applications, post-receipt of summons and assuming that Mr. Jati Ram was engaged, there is no material which even remotely establishes the alleged negligence. The *ex parte* order was passed on 02.09.2024 and was available on the website of this Court and yet no steps

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were taken to file an application to set aside the order or to join the proceedings thereafter and in these circumstances, the Court rightly decreed the suit on 25.10.2024. The factum of arrest of the husband of the Chairperson of the school, pleaded as one of the reasons for not following up the case closely, is also of no consequence as the arrest was on 30.11.2024. The assertion that Defendant learnt of the decree only on 14.02.2024 when Local Commissioner visited the premises is also unbelievable and palpably false since the judgement was on the website and thus available in public domain.

23. The Supreme Court in ***A. Murugesan v. Jamuna Rani, (2019) 20 SCC 803,*** held that unless 'sufficient cause' is shown for non-appearance of the Defendant on the date of hearing, Court has no power to set aside the *ex parte* decree and this judgement fully applies in this case as Defendant is unable to make out a case of sufficient cause. In fact, the instant case is a classic case of an indolent litigant who has failed the test of vigilance in prosecuting its defence and has adopted the usual course of putting the blame on a counsel, whose engagement is also unsubstantiated. The maxim *vigilantibus et non dormeintibus jura subveniunt* i.e., law assists those who are vigilant and not those who are indolent, applies with full force in the present case. Defendant is not some rustic illiterate person, who is unaware of his rights, but a large educational institution with literate people running the school, who ought to have diligently defended the case once the summons were received.

24. Judgments cited on behalf of the Defendant are distinguishable. In ***Dwarika Prasad (supra),*** the Defendant was an uneducated, naïve and aged person unaware of and unable to understand Court proceedings. Judgment in ***Raghu Raj (supra)*** is also distinguishable as in the said case, the reason for

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setting aside the order was that name of the counsel was mentioned on the next page due to which listing of the matter escaped the attention of the counsel and he could not appear and the appeal was dismissed for non-prosecution. Further, the Court observed that after an appeal is admitted, it can only be decided on merits and not dismissed for non-prosecution. In ***Rafiq (supra),*** the Supreme Court set aside the *ex parte* order on the ground that party should not suffer for inaction or deliberate omission of the agent, whereas in the present case, Defendant concedes service of summons but is unable to substantiate even the engagement of the counsel.

25. I.A. 12419/2025 is filed seeking condonation of delay of 196 days delay in filing the application under Order IX Rule 13 CPC and the grounds are identical in both the applications viz. negligence of the counsel and the Defendant was unaware of decree until the Local Commissioner visited its premises. Defendant is unable to make out a case for condonation of delay *sans* proof of engagement of the counsel named in the application and moreover, the judgement was available on the website and it was the duty of the Defendant to defend the suit diligently and keep itself updated with the case status, which it failed to do.

26. Both applications are accordingly dismissed, being bereft of merit.

JYOTI SINGH, J.

NOVEMBER 03, 2026*/YA*

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