2026:DHC:7839-DB

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

% Date of decision: 15.09.2026

\# **CNR No. DLHC010429422026**

\+ FAO (COMM) 263/2026 CM APPL. 61558-61560/2026

KASIF AHMED .....Appellant

Through: Mr. Sandeep Kumar Mahapatra, Sr. Adv. with Mr. Tribhuvan and Ms. Amruta Padhi, Advs.

versus

M/S TENAX INDIA STONE PRODUCTS PVT LTD. .....Respondent

Through: Mr. Anirudh Bakhru, Mr. Shravan Kumar Bansal, Ms. Ayushi Arora and Mr. Siddharth Sekhri, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 15.09.2026

MANMEET PRITAM SINGH ARORA, J. (ORAL)

1. This is an appeal under Section 104 read with Order XLIII Rule 1(d) read with Section 151 of the Code of Civil Procedure, 1908 [‘CPC’], read with Section 13(1) of the Commercial Courts Act, 2015 [‘Act of 2015’], assailing the judgment dated 17.07.2026 [‘impugned order’] passed by the District Judge (Commercial)- 03, South, Saket Courts, New Delhi in Misc. DJ 195/2025 [‘Trial Court’] in CS(COMM) No. 260/2020 titled as ‘M/s Tenax India Stone Products Pvt. Ltd v. Kasif Ahmed’. The learned Trial Court, *vide* the impugned order, dismissed the Appellant’s application seeking setting aside of the ex-parte judgment dated 07.07.2025, as well as the order dated 20.04.2023 whereby the Appellant was proceeded ex-parte.

1.1. The learned Trial Court, *vide* ex-parte judgment dated 07.07.2025 on

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the basis of the ex-parte evidence led by the Respondent, passed a decree for permanent injunction restraining the Appellant from using the impugned trademark and granted damages and costs to the extent of Rs. 9,00,000/- against the Appellant. The said ex-parte judgment dated 07.07.2025 is not a subject matter of this appeal.

BRIEF FACTS SET UP BY THE APPELLANT

2. The Appellant, based in Kolkata, has been engaged in the business of adhesives for the past eight [8] years. The Appellant is using the impugned trademark 'T-MAX' for his products.

2.1. It is stated that the Respondent is engaged in the business of manufacturing and trading of adhesives, industrial glue and adhesives, natural resins, corrosion inhibitors, polish, polishing, etc., and that it had been using the trademark 'TENAX', which was registered in 2003.

2.2. The Respondent instituted a commercial suit, i.e., CS (COMM) 260/2020, on 28.09.2020 seeking permanent injunction reliefs against infringement of its trademark/copyright, and other ancillary reliefs in respect of the use of the impugned trademark 'T-MAX' by the Appellant.

2.3. It is stated that upon service of summons, the Appellant engaged Mr. Somraj Gangopadhyay, Advocate, who appeared before the learned Trial Court on 04.11.2022, when four [4] weeks were granted for filing the written statement. However, on 10.01.2023, a further extension of time was sought. It is stated that the Appellant had the written statement prepared and signed the said statement. It is stated that the Appellant was informed by his counsel that the written statement had been served on the Respondent and would be filed with the Court.





2.4. It is stated that thereafter, when the matter was taken up on 22.02.2023, it was recorded that the Respondent had received the Appellant's written statement through WhatsApp, but the same had not been filed in the Court.

2.5. It is stated that the proceedings held on 04.11.2022, 10.01.2023 and 22.02.2023 show that the Appellant was diligently prosecuting his defence to the suit. The act of engaging a counsel and filing a written statement is proof of the said diligence. It is stated that the Appellant was not aware that the written statement signed by him had not been filed in the Court by the counsel.

2.6. It is stated that in October, 2023, the Appellant was informed by his counsel that the Respondent was willing to settle the matter and a settlement would be in the interest of both the parties. It is stated that the settlement talks between the counsel for the Appellant and the Respondent continued for more than a year. It is admitted that the Appellant himself did not participate in the said settlement talks. It is stated that the counsel for the Appellant informed him that though the settlement talks had not fructified, the same were underway. It is stated that the Appellant therefore believed that the suit was pending and settlement talks were ongoing since October 2023.

2.7. It is stated that on 12.08.2025, the Appellant received a legal notice dated 08.08.2025 from the counsel for the Respondent, inter alia, informing him that the subject suit had been decreed ex-parte by way of judgment dated 07.07.2025 and damages as well as costs amounting to Rs. 9,00,000/- had been imposed upon him.

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2.8. It is stated that on receipt of notice, the Appellant tried to contact his counsel, Mr. Somraj Gangopadhyay. However, despite repeated attempts, the Appellant was unable to contact his counsel, who stopped responding to his calls. Consequently, the Appellant filed a complaint against the counsel before the Bar Council of West Bengal on 28.08.2025 and engaged another counsel, who, after inspecting the publicly available records, informed him that no written statement had been filed till then.

The Appellant further learnt that he had been proceeded ex-parte *vide* order dated 20.04.2023 in the suit as no one had appeared on his behalf.

2.9. The Appellant thereafter filed an application under Order IX Rule 13 CPC before the learned Trial Court, seeking setting aside of the order dated 20.04.2023 proceeding the Appellant ex-parte and the ex-parte judgment dated 07.07.2025, along with condonation of delay in filing the application, inter alia, on the ground that despite having engaged Mr. Somraj Gangopadhyay as his counsel to defend the case, his counsel's negligent conduct resulted in the passing of an ex-parte decree against him.

2.10. After hearing the parties, the learned Trial Court passed the impugned order dismissing the Appellant's Order IX Rule 13 CPC application, holding that the Appellant had failed to demonstrate that he was prevented by any sufficient cause from appearing when the suit was called out for hearing on 20.04.2023. The learned Trial Court held that the Appellant's conduct shows total negligence in defending the suit and that shifting the entire blame for non-appearance on 20.04.2023 and thereafter in the suit is not bona fide and does not satisfy the test of sufficient cause under Order IX Rule 13 CPC.

2.11. In these facts, the Appellant has preferred the present appeal.

SUBMISSIONS BY THE APPELLANT

3. Mr. Sandeep Kumar Mahapatra, learned senior counsel for the Appellant, stated that the Appellant was under the bona fide belief that the counsel engaged by him was looking after his interest by undertaking all the requisite exercises like filing of written statement and appearing before the learned Trial Court.

3.1. He stated that the Appellant was not well versed with Court proceedings or aware of the manner of monitoring the same through digital means, and genuinely believed that his interests were being duly protected by him.

3.2. He stated that the Appellant had been informed by counsel that settlement talks were underway and that the Respondent was willing to amicably resolve the matter. He further stated that the Appellant had been advised that he would be kept informed of the progress thereof. Thereafter, the said counsel kept assuring that the settlement talks were still underway throughout 2023-2024.

3.3. He stated that the learned Trial Court erred in not appreciating that it was a fit case to construe the term 'sufficient cause' liberally to ensure that substantial justice is done to the Appellant, who was otherwise diligent in pursuing the case and would have been able to participate in the proceedings but for the conduct of his counsel.

3.4. He relied upon the judgment of the Supreme Court in **A. Murugesan v. Jamuna Rani (2019)**[1] to state that sufficient cause is required to be construed liberally, having regard to the facts and circumstances of each

[1] (2019) 20 SCC 803

case.

3.5. He stated that the learned Trial Court, having condoned the delay on the very grounds pleaded, could not have subsequently held the same grounds to be insufficient for setting aside the ex-parte judgment dated 07.07.2025, rendering the impugned order inherently contradictory.

SUBMISSIONS BY THE RESPONDENT

4. Mr. Anirudh Bakhru, learned counsel for the Respondent, stated that the Appellant has not placed on record any documents, viz. printouts of e-mail, letters, call detail records, etc., to substantiate his contention that he was in constant touch with his counsel in the year 2023-2024.

4.1. He stated that the Appellant has filed no documentary evidence to substantiate the pleas taken by him in the application.

4.2. He relied upon the judgment of the Supreme Court in **Rajneesh Kumar v. Ved Prakash (2024)**[2] to state that a litigant owes a duty to be vigilant about his own rights and is expected to be equally vigilant about the judicial proceedings pending in the Court, and cannot throw the entire blame on the Advocate.

COURT'S FINDINGS

5. This Court has heard the learned counsel for the parties and perused the record.

6. The non-controvertible facts evident from the record of the suit proceedings are as under:

i. The Appellant was duly served with summons on 27.08.2022. The

[2] 2024 SCC OnLine SC 3380

counsel for the Appellant entered appearance before the learned Trial Court on 04.11.2022 and, while admitting service of summons, sought a copy of the plaint and the documents. It is admitted that the plaint and documents were duly supplied.

ii. The learned Trial Court, *vide* order dated 04.11.2022, granted four [4] weeks to the Appellant to file his written statement along with an affidavit of admission/denial of documents filed by the Respondent, failing which the Appellant was liable to pay costs of Rs. 20,000/- to the Respondent.

iii. The Appellant failed to file the written statement and the affidavit of admission/denial of documents within four [4] weeks. The Appellant sought further time from the Court at the hearing dated 10.01.2023. The learned Trial Court granted additional time to the Appellant to file the written statement and directed him to pay costs of Rs. 20,000/- to the Respondent and listed the matter for 22.02.2023.

iv. When the matter was taken up on 22.02.2023, the learned Trial Court recorded that the Appellant had failed to file the written statement, the affidavit of admission/denial of documents with the Court, and had failed to deposit the costs of Rs. 20,000/-. The learned Trial Court, however, recorded the statement of the counsel for the Respondent that he had received a copy of the written statement through WhatsApp. In these facts, the Court fixed the matter for 20.04.2023 to enable the Appellant to bring the written statement, the affidavit of admission/denial of documents on record, along with costs. The matter was further fixed for case management hearing and framing of

issues.

v. However, on 20.04.2023, none appeared on behalf of the Appellant. The learned Trial Court recorded that no written statement had been filed with the Court, though a copy had been shared with the counsel for the Respondent through WhatsApp. It noted that the costs of Rs. 20,000/- imposed *vide* previous order had not been paid. It further recorded that since the Appellant has been served on 27.08.2022 and supplied with the plaint and documents on 04.11.2022, the period of 120 days, which is the outer limit for filing a written statement under the Act of 2015, has since expired. In these facts, relying upon the judgment of the Supreme Court in **M/s SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. (2019)**[3], the Appellant's right to file written statement was closed. In addition, the Court recorded that none had appeared despite several calls during the day and therefore proceeded ex-parte against the Appellant.

vi. As per the suit record, Appellant's counsel appeared through Video Conferencing ['VC'] link on 01.04.2025 and 23.05.2025; however, no application was filed for setting aside the order dated 20.04.2023 proceeding ex-parte.

vii. The Respondent thereafter, on 23.05.2025, led ex-parte evidence of its witness Mr. Sachin Sharma, PW1, who tendered in evidence documents marked as Ex. PW1/1 to Ex. PW1/23 [Colly]. Two [2] years after the Appellant was proceeded ex-parte, the final arguments in the suit were heard on 09.06.2025, and the ex-parte judgment was

[3] (2019) 12 SCC 210

pronounced on 07.07.2025.

7. The aforesaid facts show that there is no dispute that the Appellant was duly served with the summons and was aware of the pendency of the suit.

8. Thus, the only issue arising for consideration is whether the Appellant was prevented by any sufficient cause from appearing in the suit when it was called out for hearing on 20.04.2023 or any date thereafter to defend the suit proceedings until the ex-parte judgment was passed on 07.07.2025.

9. The Appellant has averred that his non-participation in the suit proceedings from 20.04.2023 is solely due to the negligence of his counsel Mr. Somraj Gangopadhyay, engaged by him to represent him in the suit proceedings. He submitted that since he signed the written statement in February, 2023, he presumed that the same had been duly filed. He submitted that he believed that compromise talks were going on between his counsel and the Respondent from October, 2023 until August, 2025, when he received the legal notice dated 08.08.2025 from the Respondent's counsel demanding compliance with the ex-parte judgment dated 07.07.2025.

10. The Appellant has admitted that he has no written evidence to substantiate his follow-ups with the counsel from 2023 to 2025. The Appellant contended that he is not digitally literate and therefore could not access the Court's website for verifying the order sheets to learn about the progress of the suit proceedings.

11. The learned Trial Court, whilst considering the aforesaid submissions of the Appellant, has held that the pleadings of the Appellant demonstrate that he was negligent in defending the case. The relevant findings are as

follows: -

> "7. Ex-parte decree can be set aside under Order 9 Rule 13 CPC if defendant satisfies the Court that summon was not duly served on him or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. In the present case defendant accepted that summons of case were duly served on him. Therefore, present case will falls in second category as provided under Order 9 Rule 13 CPC.
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> 8. As per defendant's own case, written statement was signed by him somewhere around February 2023 while ex-parte decree was passed on 07.07.2025. It is surprising that defendant was not following up his case for more than two years. **This only demonstrates that defendant was not only negligent but also callous in defending the present case. A litigant is not expected to remain indifferent to legal proceedings initiated against him/her for more two years. Furthermore, defendant has not placed on record any documents viz. prints out of e-mail, letters, call details record, etc., to substantiate his contention that he was in constant touch with his Advocate who kept assuring him that interest of defendant is being protected.**
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> ……
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> 10. Plaintiff is right in contending that if such a ground for non-appearance of a litigant is accepted, then any litigant can simply wait for an adverse judgment/decree to be passed against him and thereafter put blame on his Counsel so as to prolong the litigation. Such an approach would defeat the legislation intent behind enacting the Commercial Courts Act, 2015. The obvious conclusion is that defendant failed to satisfy the Court that he was prevented by any sufficient cause from appearing in the Court when the suit was called on for hearing.
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> ……
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> 21. Principles of law laid down in the abovesaid case are squarely applicable to the facts of present case. The version putforth by defendant that his Advocate kept assuring him that he is protecting his interest appears to be an afterthought and does not inspire the confidence of Court.
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> 22. It may also be mentioned here that we are living in an age of information and technology. A litigant like defendant who is based in a metropolitan city like Calcutta can easily have access to information about his case available on online platform like Court's website. Defendant only has to remember some particulars of case viz.title of case, case number, date of hearing, name of Court etc. to know about the status of case online. Law does not come to the aid of negligent litigant.
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> 23. From the above discussion, it is clear that defendant has miserably failed to demonstrate that he was prevented by any sufficient cause from hearing

when the suit was called on for hearing and hence, the application under Order 9 Rule 13 CPC must fail. Accordingly, the application filed by defendant under Order 9 Rule 13 CPC is dismissed."

[Emphasis supplied]

12. The learned Trial Court relied upon the judgment of the Supreme Court in **Nitin Mahadeo Jawale v. Bhaskar Mahadeo Mutke (2024)**[4], **International Business Machines Corporation v. Tivoli Gardens (2026)**[5] and **New Bank of India v. Marvels (India) (2001)**[6] to conclude that the tendency of a litigant to attribute to his/her negligence on the Advocate for adverse orders suffered in Court proceedings has to be deprecated.

13. In this regard, the reliance placed by the learned counsel for the Respondent on another judgment of the Supreme Court in **Rajneesh Kumar v. Ved Prakash** (supra) is also apposite. The relevant paragraphs read as under: -

"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. reported in (1993) 2 SCC 185, wherein this Court observed as under:-

"8. The advocate is the agent of the party. His acts and statements, made

[4] 2024 SCC OnLine SC 3468
[5] 2026 SCC OnLine Del 828
[6] 2001 SCC OnLine Del 523

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 [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 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]

14. We find no error in the findings of wilful negligence of the Appellant returned by the learned Trial Court. The orders passed by the learned Trial Court show that full opportunity of participating and presenting his defence was granted to the Appellant in the suit proceedings. The orders dated 04.11.2022, 10.01.2023, 22.02.2023 and 20.04.2023 show that the learned trial Court granted sufficient time to the Appellant to file his written statement and defend the suit. The non-filing of the written statement and the affidavit of admission/denial of documents despite the opportunities evidences the Appellant's own inaction. Even after the Court proceeded ex-parte on 20.04.2023, the suit remained pending for two [2] years. The explanation of the Appellant that it was orally informed by the counsel that

there are settlement talks underway between the counsel and the Respondent would not be a sufficient cause for the Appellant to not be aware of the status of the suit proceedings, especially when the Appellant admittedly has failed to place on record any evidence of correspondence with his counsel during the intervening period to substantiate the said claim. The order dated 11.09.2024 records that the settlement talks between the parties are not progressing and therefore, the matter was listed for ex-parte plaintiff's evidence. In these facts, we are of the considered opinion that due process was followed by the learned Trial Court before proceeding ex-parte on 20.04.2023 and passing the ex-parte judgment dated 07.07.2025, and the Appellant has failed to show any sufficient cause.

15. It is incumbent upon a litigant to remain vigilant about the proceedings in which he is a party. The litigant has a duty to keep himself apprised of the orders passed, directions given by the Court and steps taken by his counsel in the suit. A litigant is expected to maintain copies of the relevant suit record, and orders passed by undertaking reasonable efforts, not only through his counsel but also on his own accord by inspecting the Court record, to remain abreast with the status of the proceedings. The entire Order IX CPC embodies this obligation. Traditionally, litigants used to physically inspect the Court files. With the advent of the internet, the Court's digital platforms and online case-status facilities have been set up with an intent to facilitate public access to the orders online and for the convenience of litigants to observe the suit proceedings in the Courts where VC facilities are available. In the facts of this case, the orders of the Commercial Court were available online, and there was also a facility for attending the Court proceedings through VC for the litigant and his/her counsel.





In this backdrop, the contention of the Appellant that he could not independently access the Court's website to download the daily orders or ascertain the status of the proceedings on account of his lack of digital literacy does not merit acceptance. Firstly, there is no material on record to substantiate this assertion, particularly when the Appellant, by his own showing, is a businessman. In present times, businessmen are compelled to be digitally savvy to make tax compliances, which all happen online. Secondly, even assuming that the Appellant is unable to operate a computer himself or use the internet or access the Court website, he had the option to seek assistance from any other person capable of using a computer and accessing the internet.

16. The Appellant thus had options to physically inspect the Court records, physically attend the Court hearing or inspect the orders through the website and attend the Court hearing virtually. As per the Appellant, he exercised neither of the aforesaid options to pursue his interest. The prolonged inaction of the Appellant shows wilful lack of diligence and fails to constitute a sufficient cause within the scope of Order IX Rule 13 CPC.

17. If such feeble contentions are accepted as evidence of 'sufficient cause' under Order IX Rule 13 CPC in a commercial suit, for setting aside an ex-parte judgment passed after giving full opportunity to a defendant to defend himself, it shall set at naught the procedural framework of the Act of 2015 which is intended for time-bound adjudication. In this case, the suit was instituted in the year 2020, the Appellant was proceeded ex-parte in the year 2023, and the ex-parte judgment was passed by the learned Trial Court after recording evidence in the year 2025. The delay of five [5] years in deciding the commercial suit was evidently due to the non-participation of

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the Appellant after the year 2023.

18. The reliance placed by the Appellant on **A. Murugesan v. Jamuna Rani** (supra) is distinguishable on facts. In the said case, the defendant was proceeded ex-parte due to his non-appearance on one date before the Court. The defendant therein, however, had shown specific circumstances preventing his appearance on that particular date, namely, a Court boycott by the Bar Association coupled with his illness. The application for setting aside the ex-parte order was moved immediately; however, the Trial Court declined to accept the said application. The Supreme Court, in those circumstances, found sufficient cause for the defendant's non-appearance. The present case stands on a different footing. The Appellant herein was proceeded ex-parte on 20.04.2023. The suit proceedings remained pending till July, 2025. As held above, the Appellant was not diligent and took no steps to participate and defend the suit proceedings despite full notice.

19. We therefore find no infirmity in the impugned order. The appeal is dismissed. Pending applications are disposed of.

MANMEET PRITAM SINGH ARORA, J

AVNEESH JHINGAN, J

SEPTEMBER 15, 2026/mt/aa

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