2026:DHC:9248-DB

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

Reserved on : 07.10.2026

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\# **CNR No. DLHC010436362026**

\+ FAO (COMM) 268/2026, CM APPL. 62621/2026, CM APPL. 62622/2026, CM APPL. 62623/2026

M/S C.B. GLOBAL SCIENTIFIC GROUP & ANR.

....Appellants

Through: Mr. Shivam Sharma, Adv.

versus

M/S SYNERGIC TRAILER AND AUTO SOLUTIONS PRIVATE LIMITED .....Respondent

Through: Mr. Shahil Rao, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

JUDGMENT

BHARAT PARASHAR, J.

1. The present appeal filed under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(d) of the Code of Civil Procedure, 1908 ('CPC') by the Appellants, who were the Defendants in the suit, assails the order dated 09.07.2026 ('Impugned Order') passed by the learned District Judge (Commercial Court)-01, South-East District, Saket Courts, New Delhi, in Misc. DJ No. 666/2026, whereby the application under Order IX Rule 13 CPC read with Section 151 CPC along with application under Section 5 of the Limitation Act, 1963, filed by the Appellants herein was dismissed.

2. For ease of reference, the parties shall hereafter be referred to as the Appellants and the Respondent, the latter being the Plaintiff in the Suit.

3. Appellant No. 1 is a proprietorship firm, which is involved in manufacture and supply of medical equipment including Nitrile Gloves, personal protective equipment kits (PPE) and other allied products, based in Sonipat, Haryana, with Appellant No. 2 as its proprietor and authorized signatory. The Respondent is a private limited company originally engaged in the business of import and supply of trailer parts, and it was only during the COVID-19 pandemic that the Respondent ventured into the business of supplying personal protective equipment (PPE) and other allied medical equipment.

4. The Respondent came into contact with the Appellants through online platforms and in the second week of July, 2020, the Respondent placed a purchase order dated 27.07.2020 for supply of 6000 boxes of Nitrile Gloves worth Rs. 23,99,040/- and between 27.07.2020 and 01.08.2020, the Respondent transferred a total sum of Rs. 23,78,500/- to the Appellants as advance payment through multiple transactions. However, the delivery could not be made by the Appellants as promised allegedly due to market disruption on account of Covid-19 pandemic.

5. It has been further averred that subsequently upon the Respondent's instructions the advance consideration was transferred to an alternate vendor M/s Akira Traders and Exporter Pvt. Ltd. but it too ultimately failed to supply the required items.

6. On the other hand, the Respondent has averred that the Appellants simply defaulted on their contractual obligations, failing to supply the ordered items despite receiving advance payments and extending repeated assurances.

7. According to the respondent, on 11.08.2021, in order to settle the dispute, Appellant No. 2 offered to make a lump sum payment of Rs. 23,00,000/- and issued a cheque bearing no. 000039 dated 12.08.2021 drawn on HDFC Bank, Kath Mandi, Old Rohtak Road, Sonipat, Haryana, for a sum of Rs.23,00,000/- in favour of the Respondent. However, upon presentation through the Respondent's banker, Union Bank of India, Sarita Vihar, New Delhi, the cheque was returned dishonoured with the remark "Funds Insufficient"*vide* memo dated 17.08.2021.

8. When payment was not made despite repeated requests, the Respondent issued a legal notice dated 13.09.2021, which, according to it, remained unanswered. The Respondent thereafter invoked pre-institution mediation proceedings under Section 12A of the Commercial Courts Act, 2015 which concluded with a Non-Starter Report on 06.12.2021.

9. For recovery of the amount, the Respondent instituted CS (Comm.) No. 01/2022 on 03.01.2022 for recovery of Rs. 23,00,000/- along with pendente lite and future interest @ 12% per annum.

10. In the suit, the Appellants were duly served on 18.08.2023. On 14.09.2023, one counsel, Mr. Ajay Tyagi appeared through video conferencing and submitted that he would file *Vakalatnama* on behalf

of the Appellants within a week. However, the Appellants, thereafter, neither appeared nor filed written statement despite service. Accordingly, *vide* order dated 20.12.2023, the right of the Appellants to file the written statement was closed. As none appeared for the Appellants thereafter, vide order dated 22.02.2024, both the Appellants were proceeded *ex parte*.

11. The Respondent thereafter led *ex parte* evidence and examined its Authorized Representative, Sh. Ranjan Sabu (PW-1) and exhibited documents Ex. PW1/A to Ex. PW1/K, including the copy of the police complaint dated 31.08.2021. After the arguments and examination of the evidence, the learned Commercial Court passed an *ex parte* judgment dated 09.08.2024, decreeing the suit against the Appellants for Rs.23,00,000/- along with interest @7% per annum from the date of institution till realization, together with costs of Rs. 30,000/-.

12. Subsequently, the Respondent instituted Execution Petition No. EXE/129/2025 before the Learned Commercial Court-01, South-East District, Saket Courts, New Delhi, which was thereafter transferred to the Court of learned Civil Judge (Senior Division), Sonipat, Haryana. The Appellants state that they came to know of the *ex parte* judgment and decree on 21.09.2025 when a process server visited the residence of Appellant No. 2 in Sonipat in connection with the execution proceedings.

13. On 05.02.2026, the Appellants, through their erstwhile counsel, preferred an application under Order IX Rule 13 CPC before the learned Commercial Court. However, the said application was

subsequently withdrawn on 29.04.2026, with liberty to file afresh, on account of formal defects, vague particulars, and an omission to place the complete factual position on record.

14. Consequently, on 18.05.2026, the Appellants filed a fresh application under Order IX Rule 13 read with Section 151 CPC, accompanied by an application under Section 5 of the Limitation Act, 1963, seeking condonation of a delay of 203 days, computed by them from the alleged date of knowledge, i.e., 21.09.2025.

15. The Appellants have contended that, upon service of summons in the suit, they promptly engaged counsel, who appeared before the Court through video conferencing on 14.09.2023. However, the counsel thereafter failed to file the *vakalatnama* or written statement or to follow up the proceedings. It has also been averred that the Appellants remained under the *bona fide* belief, on the assurances of their counsel, that he was duly attending to and following up the proceedings. According to the Appellants, even after they were proceeded *ex parte* and the ex parte decree was passed, the erstwhile counsel collected professional fees and court fees amounting to Rs.24,800/- for filing a Regular First Appeal (Comm.) before this Court, but failed to pursue the same. The said appeal is stated to be still lying under objections before the Registry.

16. In addition, Appellant No. 2 has relied upon severe personal distress as an explanation for his inability to effectively monitor the proceedings. On 11.09.2023, three days before the first appearance of the counsel engaged by the Appellants, his elder brother passed away in

a train accident. It is submitted that the sudden tragedy, coupled with the winding up of the business of Appellant No. 1, adversely affected the financial condition of the family and impaired the ability of Appellant No. 2 to monitor the ongoing proceedings.

17. The learned Commercial Court, however, dismissed the fresh application dated 12.05.2026, filed on 18.05.2026, under Order IX Rule 13 read with Section 151 CPC, along with the application under Section 5 of the Limitation Act, 1963, vide the Impugned Order dated 09.07.2026. It was held that the application was barred by limitation and that, since summons had been duly served in the suit, the period of 30 days was required to be reckoned from the date of the judgment dated 09.08.2024. The application was first listed on 22.05.2026. It was further held that both the conditions contained in the second proviso to Order IX Rule 13 CPC stood satisfied, as the Appellants had notice of the date of hearing and sufficient time to appear, and had failed to establish any "sufficient cause" which prevented them from appearing in the suit.

18. Thereafter, the learned Civil Judge (Senior Division), Sonipat, in the execution proceedings, vide order dated 31.08.2026, issued a conditional warrant of arrest against Appellant No. 2 through the concerned SHO, returnable on 10.09.2026. Upon filing of the present appeal, a Co-ordinate Bench of this Court, vide order dated 16.09.2026, directed the learned Executing Court not to proceed with the arrest of Appellant No. 2 in execution of the subject money decree.

19. Learned counsel representing the Appellants submits that the

learned Commercial Court erred in dismissing the application under Order IX Rule 13 read with Section 151 CPC without properly appreciating the circumstances which prevented the Appellants from appearing in the suit proceedings.

20. According to the Appellants, the counsel engaged by them failed to take the requisite steps, adequately represent their interests or apprise them of the progress of the suit. It is further submitted that, even after passing of the decree, despite receiving professional fees as well as court fees for preferring an appeal against the *ex parte* decree, the said counsel failed to prosecute the appeal beyond the stage of Registry objections. The Appellants state that a complaint was subsequently lodged against the erstwhile counsel before the Bar Council of Delhi on 29.08.2026. It is, therefore, contended that the Appellants had *bona fide* relied upon their counsel and ought not to be prejudiced on account of his alleged professional negligence, and that their non-appearance was neither deliberate nor intentional.

21. It is further contended that the aforesaid circumstances were compounded by a personal tragedy. During the period when the suit was pending before the learned Commercial Court, Appellant No. 2 suffered severe personal trauma on account of the untimely death of his elder brother. Learned counsel submits that the incident caused profound mental distress to the family and affected the ability of Appellant No. 2 to monitor the proceedings.

22. In support of the aforesaid submissions, learned counsel placed reliance upon the decision in ***Rafiq v. Munshilal,*** *1981 SCC OnLine SC*

222, to contend that an innocent litigant ought not to be made to suffer for the negligence or inaction of the counsel engaged to represent him. Reliance is also placed upon ***Dwarika Prasad (D) Through LRs v. Prithvi Raj Singh,*** 2024 SCC OnLine SC 3828 as well as ***Sambhaji v. Gangabai***,(2008) 17 SCC 117, in support of the proposition that procedural rules are intended to advance the cause of justice and should not be applied so as to defeat substantive rights.

23. On the question of limitation, learned counsel for the Appellants submits that the Appellants acquired knowledge of the ex parte judgment and decree only on 21.09.2025 and appeared before the Executing Court on the very next day, i.e., 22.09.2025, whereafter they pursued their remedies. It is submitted that their conduct demonstrates that they had not deliberately avoided the proceedings.

24. We have heard the arguments and perused the record.

25. Before an *ex parte* decree passed against the Defendant could be set aside by a Court under Order IX Rule 13 CPC, it must be shown that either the summons were not duly served upon the Defendant or that he was prevented by a sufficient cause from appearing when the suit was called on for hearing. The second proviso to Order IX Rule 13 CPC further provides that no Court shall set aside an *ex parte* decree merely on the ground of any irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and sufficient time to appear and answer the Plaintiff's claim.

26. In this regard it would be pertinent to refer to the observations made in ***Hira Sweets & Confectionary Private Ltd. Vs. Hira***

Confectioners, 2021 SCC OnLine Del 1823, wherein while considering the expression 'sufficient cause', the following observations were made in Paragraphs 14 and 15 as under:-

> *"14. In Sudarshan Sareen (Supra), 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 the case of Parimal v. Veena reported as* ***(2011) 3 SCC 545****, where the expression "sufficient cause" was interpreted as under:*
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> > *"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 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 Ramial 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] and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [(2010) 5 SCC 459].)*
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> *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 [(2000) 9 SCC 94], Madanlal v. Shyamlal [(2002) 1 SCC 535], Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. [(2002) 3 SCC 156], Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195], Kaushalya Devi v. Prem Chand [(2005) 10 SCC 127], Srei International Finance Ltd.v. Fairgrowth Financial Services Ltd. [(2005) 13 SCC 95] and Reena Sadh v. Aniana Enterprises [(2008) 12 SCC 589].)

16. In order to determine the application under Order 9 Rule 13 CPC, 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 reported as (2019) 20 SCC 803*** *affirmed its earlier view in G.P. Srivastava v. R.K. Raizada and Others reported as* ***(2000) 3 SCC 54****, which is reproduced as under:*

"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 13has to be construed as an elastic expression for which no hardand-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 pate 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."*

27. Coming now to the facts of the present case, the Appellants have principally relied upon two circumstances to explain their non-appearance, namely, the conduct of their erstwhile counsel and the personal distress suffered by Appellant No. 2 on account of the untimely demise of his elder brother. The record indicates that although the brother of Appellant No. 2 passed away on 11.09.2023, the family came to know of his death only subsequently. While this Court is mindful of the grave personal tragedy suffered by Appellant No. 2 and its emotional impact upon the family, nothing has been placed on record to establish that the bereavement prevented the Appellants from attending to the proceedings over the succeeding months. There was no

appearance on their behalf on 20.12.2023 or thereafter, and they were ultimately proceeded *ex parte* on 22.02.2024. The personal circumstances pleaded, though undoubtedly distressing, do not sufficiently explain their continued non-appearance on the relevant dates.

28. As regards the alleged default of the erstwhile counsel, while a litigant acting *bona fide* ought not ordinarily to suffer for the negligence of his counsel, the mere engagement of counsel does not absolve a party of the duty to pursue the proceedings with reasonable diligence. Although the Appellants assert that they remained in contact with their erstwhile counsel and were repeatedly assured that the matter was being attended to, this assertion is unsupported by particulars. Neither the dates on which such enquiries were made nor the dates on which such assurances were given have been disclosed, nor has any relevant material been placed on record to evidence them. Moreover, the filing of a complaint against the erstwhile counsel only after the passing of the Impugned Order does not establish sufficient cause for the earlier non-appearance. In these circumstances, a bare plea of continued reliance upon counsel fails to demonstrate the diligence required of the Appellants.

29. The conduct of the Appellants after acquiring knowledge of the decree also requires consideration. According to them, they became aware of the *ex parte* judgment and decree on 21.09.2025 and appeared before the Executing Court on the very next day. The record shows that they thereafter filed objections in the execution proceedings on 15.11.2025, which came to be dismissed on 20.01.2026. The first

application under Order IX Rule 13 CPC was filed on 05.02.2026. Thus, although the Appellants cannot be said to have remained wholly inactive after acquiring knowledge of the decree, the steps taken in the execution proceedings do not explain why the statutory remedy for setting aside the *ex parte* decree was not invoked earlier. More importantly, since summons in the suit had admittedly been duly served upon the Appellants, the learned Commercial Court was justified in reckoning limitation from the date of the decree and not from the asserted date of knowledge. Even if the Appellants were given the benefit of the latter date for examining their subsequent conduct, the explanation offered does not satisfactorily account for the delay in invoking the remedy under Order IX Rule 13 CPC.

30. The decisions relied upon by learned counsel for the Appellants do not lead us to a different conclusion. The principle that a litigant should not suffer solely for the fault of counsel applies where the litigant has himself acted *bona fide* and with reasonable diligence. None of the cited authorities lays down that every default attributed to counsel would, irrespective of the facts and the litigant's own conduct, constitute sufficient cause under Order IX Rule 13 CPC. Equally, the principle that procedural rules must advance substantial justice does not require the Court to accept a general plea of counsel default without examining whether sufficient cause has been established on the facts of the particular case. For the reasons recorded above, we are unable to hold that such cause has been established here.

31. In view of the aforesaid facts and circumstances, we are unable to find any sufficient cause which prevented the Appellants from

appearing when they were proceeded *ex parte* or which satisfactorily explains their subsequent delay in seeking to have the *ex parte* decree set aside. The learned District Judge (Commercial Court), therefore, committed no error in declining to exercise discretion under Order IX Rule 13 CPC and in dismissing the accompanying application seeking condonation of delay.

32. Accordingly, we find no ground to interfere with the Impugned Order. The present appeal is dismissed. Pending applications also stand disposed of.

33. There shall be no order as to costs.

BHARAT PARASHAR, J.

ANIL KSHETARPAL, J.

OCTOBER 16th , 2026/DH/MN

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