2026:DHC:9215-DB

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

Reserved on: 05th October, 2026
Pronounced on: 15th October, 2026
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\# **CNR No. DLHC010826312025**
\+ **FAO (COMM) 297/2025, CM APPLs. 66850-66852/2025**

PAWAN .....Appellant
Through: Mr. Neeraj Kumar Singh & Mr. Abhinav Kr. Singh, Advs.

versus

AMIT GUPTA .....Respondent
Through: Mr. Sarthak Ahuja & Ms. Nitisha Soni, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE DR. JUSTICE ADITI CHOUDHARY

JUDGMENT

***Per* ADITI CHOUDHARY, J.**

1. The appellant, by way of the present appeal under Section 13 of the Commercial Courts Act, 2015 (for brevity 'Act of 2015') assails the order dated 07.08.2025 passed by the learned District Judge (Commercial Court)-02, North District, Rohini Courts, in Misc. DJ No. 161/2025, whereby the appellant's application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for brevity 'CPC') for setting aside the *ex-parte* judgment and decree dated 26.11.2024 in CS (Comm) No. 520/2023, was dismissed.

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Facts of the case

2. The brief facts leading to filing of the present appeal are that the appellant/defendant approached the respondent/plaintiff for supply of fertilisers and other agricultural products on credit basis. The respondent agreed and dispatched the products ordered by him. The outstanding principal amount towards the supply of goods was not paid despite continuous requests by the respondent. The respondent accordingly filed a suit for recovery of a sum of Rs.12,24,939/- along with *pendente lite* and future interests and costs.

3. The appellant appeared before the learned Trial Court on receipt of summons on 25.01.2024. Since no written statement was filed by the appellant within thirty days, the right of the appellant to file the written statement was closed. Thereafter, notional issues were framed and the matter was assigned to the Local Commissioner for recording of evidence. When none appeared on behalf of the appellant, final arguments were advanced by the learned counsel for respondent and thereafter *ex-parte* judgment was pronounced on 26.11.2024.

4. The appellant filed an application under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree which was dismissed by the learned Trial Court vide the impugned order dated 07.08.2025. The appellant in his application under Order IX Rule 13 CPC pleaded the following reasons for his non-appearance:

> *"B. Then defendant engaged his counsel namely Ms. Reeta Puniya having mobile no. 9540297224 to defend the said recovery matter but the counsel after being approached and her consequent engagement in the present suit didn't contact with the defendant ever since after few appearances in the court room. Furthermore she even didn't pick the phone calls of the defendant nor apprised the defendant about the ongoing proceedings of the present ssuit.*

C. That the defendant was not contacted for a huge length of time, being concerned with the fate of the matter, several times telephonically contacted the said counsel to know about the present status of the matter but, the counsel didn't revert his call. In addition to this, defendant made very possible efforts to contact the counsel, but failed, wherefore, the defendant didn't able to know about the status of the proceedings nor he able to appear before this Hon'ble Court.

D. On 19.01.2025 when the defendant came to know about the pronouncement of the ex parte judgment dated26.11.2024 he immediately contacted and engaged another counsel and hence this present application.

3.That the defendant is remain vigilant about his matter moreover, he initially appeared in the court but due to noncontact with the counsel, didn't able to know the dates of hearing, status of the matter.

4.That the nonappearance is not deliberately nor intentional but due to above said Bonafide unanticipated events.

5.That the defendant is just 10th passed person and he didn't able to know about the court proceedings."

5. The learned Trial Court *vide* the impugned order held that the appellant incorrectly claimed that his counsel Ms. Reeta Punia was negligent as she did not appear before the Court. Even if it is presumed that the appellant's calls were not answered by his counsel, his duty was to check the website of the Court to know the status of his case and if he was not literate, he could have approached the Computer Service Centre, which is readily available in his State. Also, if he was unable to get information through the Computer Service Centre, he could have approached the Court. However, for one long year, he did not adopt any of the said recourses. After appearing on 25.01.2024, he came to the Court only on 19.01.2025, which shows his negligent conduct. The learned Trial Court accordingly held that there was no sufficient cause for his non-appearance.

6. The present appeal has been filed praying for setting aside the order

dated 07.08.2025 and remanding the matter back to the Trial Court for decision on merits after granting opportunity to the appellant to file written statement and contest the case. Before this Court, at the request of the parties, the matter was referred for mediation to the Delhi High Court Mediation and Conciliation Centre (Samadhan). However, the matter could not be settled.

Rival Submissions of the Parties

7. We have heard the learned counsels for both sides.

8. During arguments, the learned counsel for the appellant while reiterating the averments made in the appeal submitted that the appellant was proceeded against *ex-parte* because of the negligent conduct and fault of his counsel who failed to communicate the date of hearing because of which his right to file written statement was closed and consequently, the *ex-parte* judgment was pronounced. He argued that the appellant cannot be penalised for the fault of his counsel. The appellant was not in a position to determine the status of the case and was dependent on his counsel. The appellant tried to get in touch with his counsel. However, she did not answer his phone because of which he could not ascertain the status of his case. The finding of the learned Trial Court that the appellant should have tracked proceedings through the Computer Service Centre or court website is "too harsh". He was not "educated enough" to avail the facility of the Computer Service Centre for knowing the status of his case. Even assuming that he had the knowledge, he was quite apprehensive about misuse of the information he would provide to the computer operator by a third party as a court litigation could give a negative impression about his business goodwill and could lower the CIBIL score, creating hindrance in taking loans. Once the counsel is engaged for prosecuting or defending any matter, the counsel is

responsible from the clerical work to final arguments except the outcome of the case. It was further argued that the learned Trial Court erred in dismissing the application under Order IX Rule 13 CPC despite sufficient cause having been shown for non-appearance.

9. *Per contra*, it was argued by the learned counsel for the respondent that the explanation given by the appellant is vague, unsubstantiated and is a tactic to deflect responsibility for his own inaction. It was the responsibility of the appellant to contact his counsel and if she was not answering the phone, he could have ascertained the status of the case from the website of the Court or should have approached the Court. However, the appellant intentionally did not follow up the proceedings because of which the Court had no option but to pass the *ex-parte* judgment. The appellant was capable of engaging a counsel at the outset and had subsequently filed his application under Order IX Rule 13 CPC through his new counsel, which goes to show that he was capable of taking care of his case. The appellant filed no material in support of his allegation against his Counsel and thus failed to show he was prevented by any sufficient cause from appearing before the learned Trial Court. The learned counsel for the defendant in support of his argument, relied upon the judgment of this Court in ***Kalu Ram Dhingra* v. *Jee Financial Consultant LLP.***[1]

Analysis and Findings

10. It would be expedient to set out the relevant legal provision. Order IX Rule 13 CPC 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*

[1]2025 SCC Online Del 6806

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 that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

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.

Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree."

11. For the purpose of understanding the import of the term "sufficient cause" under Order IX Rule 13 CPC, it would be useful to refer to judicial precedents wherein the said term has been interpreted. In ***G.P. Srivastava* v. *R.K. Raizada and Others***[2], the Hon'ble Supreme Court examined the scope of Order IX Rule 13 CPC and observed 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 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

[2](2000) 3 SCC 54

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."

12. Further, the Hon'ble Supreme Court in ***Parimal* v. *Veena alias Bharti***[3], held 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 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 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])

14. In Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] this Court observed that every good cause is a sufficient cause and must offer an explanation for non-appearance. The only difference between a "good cause" and "sufficient cause" is that the requirement of a good cause is complied with on a lesser degree of proof than that of a "sufficient cause". (See also Brij Indar Singh v. Kanshi Ram [(1916-17) 44 IA 218 : AIR 1917 PC 156] , Manindra Land and Building Corpn. Ltd. v.

[3](2011) 3 SCC 545

Bhutnath Banerjee [AIR 1964 SC 1336] and Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] .)

15 [Ed. : Para 15 corrected vide Official Corrigendum No. F.3/Ed.B.J./14/2011 dated 25-2-2011.]. 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 : 2000 SCC (L&S) 845 : AIR 2000 SC 2306] , Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] , Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. [(2002) 3 SCC 156 : AIR 2002 SC 451] , Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] , 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. Anjana Enterprises [(2008) 12 SCC 589 : AIR 2008 SC 2054] .)

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."

(emphasis supplied)

13. The case at hand is required to be considered in the light of the aforesaid settled legal propositions. To get a complete picture, the proceeding sheets of the Trial Court need to be seen. A perusal of the Trial Court record shows that the suit for the first time was listed on 16.09.2023, on which date summons were issued to the appellant. On 25.01.2024, the appellant appeared in person submitting that he had received the summons of the suit on 22.01.2024. The appellant was directed to file the written statement within a period of 30 days as prescribed under the Act of 2015. On

01.04.2024, the counsels for both sides appeared. It was observed by the learned Trial Court that the appellant was served on 22.01.2024 with the summons of the suit however, since no written statement was filed within 30 days, the right of the appellant to file written statement was closed. It was also observed in the order that insofar as 120 days are yet to elapse, the appellant was at liberty to move an appropriate application seeking condonation of delay in filing of written statement within this window. Notional issues were framed and parties were directed to file their respective affidavits of the witnesses. To achieve expedient disposal of the case, the evidence was directed to be recorded by the Local Commissioner. The matter was fixed for the report of the Local Commissioner for 27.05.2024 and for final arguments on 01.06.2024. The Counsels for the parties were permitted to file their respective written arguments by 27.05.2024. In the proceedings before the Local Commissioner, two witnesses were examined. However, the appellant did not appear to cross examine them.

13.1. Before the learned Trial Court on 29.07.2024, the Counsel for the respondent appeared, however, none appeared for the appellant. On 05.11.2024, the proxy counsel for Ms. Reeta Punia, learned counsel for the appellant appeared and the matter was fixed for final arguments, however, learned counsels for both sides sought an adjournment and the matter was fixed for final arguments for 23.11.2024. On 23.11.2024, none appeared for the appellant, final arguments were advanced by the learned counsel for the respondent and the matter was fixed for pronouncing judgment on 26.11.2024, on which date the *ex-parte* judgment was pronounced. Thereafter, on 20.01.2025 the appellant filed his application under Order IX Rule 13 CPC seeking setting aside of the *ex-parte* judgement.

14. The application of the appellant under Order IX Rule 13 CPC, shows

that the appellant has squarely put the blame upon his counsel claiming that he made efforts to contact her. However, she did not answer his phone. Regarding the indulgence the Court can give on the ground of the fault of the counsel, the observations of the Hon'ble Supreme Court in ***Salil Dutta* v. *T.M. and M.C. Private Ltd.*[4]**, are relevant. The said case arose from an *ex-parte* decree passed against the defendant-tenant in an eviction suit. The defendant therein had earlier filed applications under Order VI Rule 16 and Order XIV Rule 5 CPC, which the Trial Court directed would be considered during final hearing. Relying on his advocate's advice that he need not remain present until those applications were decided, the defendant along with his advocate failed to appear when the suit was taken up for hearing. Consequently, the defendant was proceeded against ex-parte and the suit was decreed in favour of the plaintiff. The defendant filed an application under Order IX Rule 13 CPC to set aside the ex-parte decree which came to be dismissed by the Trial Court and initially by the Calcutta High Court as well. Thereafter, the High Court was informed of the Hon'ble Supreme Court's decision in ***Rafiq and Another* v. *Munshilal and Another***[5], which had not been cited earlier. The High Court reopened the appeal since its attention was not invited to the decision in ***Rafiq*** (*supra*). It reconsidered the matter and allowed the defendant's appeal, setting aside the *ex-parte* judgment. Aggrieved, the plaintiff filed the appeal before the Hon'ble Supreme Court. While setting aside the judgment passed by the High Court, the Hon'ble Supreme Court observed that:

> *"**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 engaged him. It is true that*

[4](1993) 2 SCC 185
[5](1981) 2 SCC 788

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 recognised. 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 be understood in the facts and circumstances of that case and cannot 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 disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. Maybe 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."

15. Further, the Hon'ble Supreme Court in ***Rajneesh Kumar and Another* v. *Ved Prakash***[6],while dealing with the issue of delay in filing an appeal before the High Court on account of the alleged inaction of the respondents' counsel, observed 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*

[6]2024 SCC OnLine SC 3380

disown him at any time and seek relief."

16. The learned counsel for the respondent has relied upon the judgment of the Coordinate Bench of this Court in ***Kalu Ram Dhingra* v. *Jee Financial Consultant LLP*** *(supra)*, wherein the plea of the defendant that his non-appearance was on account of his counsel was not accepted. The cited case assists the case of the respondent. In the said case, the parties executed an agreement to sell. Since the appellant failed to execute the sale deed, the respondent instituted a suit for specific performance of the said agreement to sell before the learned Trial Court. Before the learned Trial Court, admittedly, though the appellant/defendant was duly represented by his counsel on a couple of dates, however, he failed to file his written statement. The learned Trial Court closed the appellant's right to file written statement and proceeded *ex-parte* against him due to his non-appearance. The appellant's application seeking recall of the said *ex-parte* order was dismissed, with costs imposed for negligence. Subsequently, in the absence of the appellant, the learned Trial Court closed the *ex-parte* evidence and passed judgment and decree in favour of the respondent. The appellant thereafter filed an application under Order IX Rule 13 CPC, attributing the non-appearance to the negligence of his erstwhile counsel. The learned Trial Court dismissed this application on the found of the appellant's persistent non-appearance despite service; failure to file his written statement; failure to cross-examine the respondent's witnesses and; failure to advance arguments. Aggrieved, the appellant filed an appeal before this Court. This Court, while rejecting the appeal, observed that the sole basis for challenging the impugned order was premised on blaming the erstwhile counsel by the appellant, which, being with no corroboration or supporting documents/acts in support of it, is a mere bald statement. A disgruntled

client cannot be allowed to blame the lawyer(s) at the mere drop of a hat, and that too in thin air. It was held that the appellant failed to show any cause for satisfying the Court that he was prevented by any sufficient cause from appearing before the learned Trial Court. The SLP filed against the impugned judgment was dismissed.

17. In the present case, the appellant specifically needs to explain the reason for the absence of him and his counsel on 23.11.2024, on which date none appeared for him, final arguments were advanced by the learned counsel for the respondent and the matter was fixed for pronouncement of judgment and on 26.11.2024, the date of pronouncement of the *ex-parte* judgment. The only explanation given by the appellant in his application under Order IX Rule 13 CPC for him being absent is that he was trying to get in touch with his counsel for a "huge length of time" who in turn did not respond. Pertinently, there is no mention of when exactly did the appellant make an effort to contact his counsel. The impression given is that he was trying to get in touch with his counsel for many months. There is no mention of what prevented him from physically contacting her when she did not respond to his calls. The vagueness of his explanation itself exposes his lackadaisical attitude towards the legal proceedings. Where the appellant was a party to the legal proceeding, it was incumbent upon him to be vigilant and follow the orders and directions of the Court. He also had the duty to follow up about the proceedings from his counsel. Where allegedly the appellant's counsel did not apprise him about the proceedings for a "huge length of time", as right observed by the learned Trial Court, he on his own accord could have inspected the Court records to know the status of the case. The appellant has claimed to have come to the Court on 19.01.2025, on which date he gained knowledge about the *ex-parte* judgment. How he

gained knowledge remains unexplained.

18. In today's age of the internet where the online case status, video-conferencing facilities for appearance in Courts and uploading of order sheets and judgments on the website of the Courts have been provided for the convenience of litigants, the litigants are in a better position to follow up their case. Where after the service of summons, the appellant himself had personally appeared in the Trial Court without his counsel, he must definitely be aware about the availability of the above facilities. Considering that the appellant was running his own proprietorship firm and was concerned about his CIBIL score, he can be presumed to be capable of protecting his interests and the argument that he could not access the Court website to ascertain the status of the case is difficult to believe. Also the argument that even if he could do so, he was apprehensive to approach a Computer Service Centre because the knowledge of the litigation would affect his CIBIL score, cannot be accepted. As has been rightly observed by the learned Trial Court the appellant exercised neither of the above options, only showing that he was not diligent in pursuing the case against him. The Hon'ble Supreme Court in ***Nitin Mahadeo Jawale and others v. Bhaskar Mahadeo Mutke***[7], has categorically observed that a litigant is expected to be diligent and vigilant concerning his case, even if it is presumed that his lawyer is negligent.

19. The facts of the present case also have to be viewed from the stand point of the proceedings being before the Commercial Court, where the trial under the Act of 2015 are required to be conducted in a time bound framework.

[7]2024 SCC OnLine SC 3468

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20. The claim of the appellant *qua* the negligence of his counsel in not informing him about the matter and not answering his calls when he was calling her to ascertain the status of the case, is too vague and devoid of material particulars, to be accepted as a sufficient cause for his non-appearance. There is no satisfactory explanation whatsoever provided by the appellant for him to be unable to have approached the Trial Court for determining the status of his case where he was not able to get in touch with his Counsel. As already observed, there is no explanation particularly given for the absence of the appellant and his counsel on 23.11.2024 and 26.11.2024. Thus we are not satisfied that the appellant honestly and sincerely intended to remain present when the suit was called on for hearing on the said dates or that he did his best to do so.

21. In the light of the above observations, we are of the opinion that the learned Trial Court vide the impugned order dated 07.08.2025 has rightly held that the case of the appellant does not fall within the four corners of Order IX Rule 13 CPC. We find no infirmity in the impugned order.

22. Consequently, the appeal is dismissed. Pending applications are disposed of.

ADITI CHOUDHARY
(JUDGE)

DINESH MEHTA
(JUDGE)

OCTOBER 15, 2026/*p'ma*

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