



2026:AHC:66904-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
COMMERCIAL APPEAL No. - 4 of 2026

M/s Shyam Traders

.....Appellant(s)

Versus

Kritagya Stone Pvt. Ltd

.....Respondent(s)

Counsel for Appellant(s)	:	Prathamesh Upadhyay
Counsel for Respondent(s)	:	

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. This appeal under Section 13(1A) of the Commercial Courts Act, 2005 ('Act') is directed against order dated 12.12.2025 passed by Commercial Court No. 1, Gautam Buddh Nagar, whereby the application filed by the appellant under Section 5 of the Limitation Act seeking condonation of delay in filing the application under Order IX Rule 13 C.P.C. has been dismissed and as a consequence, the application also has been dismissed.
2. The Civil Original Suit No. 153 of 2022 was filed by the respondent-plaintiff in which the appellant, on being served, appeared through counsel, wherein on account of non-appearance of the defendant or his counsel, the suit was ordered to be proceeded ex-parte and was decreed on 20.10.2023.
3. The present application under Order IX Rule 13 C.P.C. was filed on 11.07.2025 along with an application seeking condonation of delay with the averments that after engaging counsel, whenever counsel was contacted, he was told that whenever there would be requirement, he would be informed. It is only when the recovery notice was received on 02.07.2025 and power was filed on 03.07.2025, the applicant became aware of decreeing of the suit on 20.10.2023, when another counsel was appointed to obtain copy of the judgment on 07.07.2025 and thereafter, without any delay, the application has been filed.
4. Allegations were made against the counsel for not appearing before the Court. Similar averments were made in the application seeking

condonation of delay.

5. The respondent contested the application with the submission that after the suit was decreed on 20.10.2023, a demand notice was sent to the judgment debtor on 22.11.2023, which was not responded to, whereafter Execution Proceedings No. 1 of 2024 were instituted, wherein the judgment debtor was issued notice, which was also duly served, however, no appearance was made. Against order dated 07.08.2025, passed by the Commercial Court refusing application under Order XXI Rule 29 C.P.C., Writ Petition No. 9316 of 2025 was filed, which remained pending.

6. The Commercial Court, after hearing the parties, came to the conclusion that after the suit was ordered to proceed ex-parte on 03.02.2023 and next date fixed was 07.04.2023, on 07.04.2023, application seeking recall of order dated 03.02.2023 was filed, when 03.07.2023 was fixed for disposal of the recall application. When on 03.02.2023, none appeared, the application was rejected and matter was ordered again to proceed ex-parte and ultimately, the ex-parte decree was passed on 20.10.2023. The Commercial Court came to the conclusion that after passing of the decree, the demand notice, sent by the decree holder, was served and the notice in the Execution Proceedings, sent by registered post was also served, the applicant was well aware of the pendency of the suit/decreed and the plea, which was raised for seeking condonation of the delay has no substance and consequently, dismissed the application.

7. Learned counsel for the appellant made vehement submissions that the appellant had engaged a counsel, who chose not to appear, which led to passing of the order to proceed ex-parte. Even in the recall application filed, the counsel did not appear, resulting in passing of the ex-parte decree and it is only when the attachment proceedings were initiated that the appellant became aware of the fact that the ex-parte decree has been passed, which fact was pleaded before the Commercial Court, however, the application seeking condonation of delay in filing the application for setting aside ex-parte decree was wrongly dismissed. Submissions have been made that it is well settled that for the mistake of the counsel, a party cannot be made to suffer and therefore, the order impugned deserves to be set aside. Reliance was placed on **Rafiq and ors Vs. Munshilal and ors** :

AIR 1981 SC 1400.

8. We have considered the submissions made and have perused the material available on record.

9. The appellant has chosen to lay the blame for the ex-parte decree and the delay in filing the application seeking setting aside of ex-parte decree on the counsel representing the appellant. It would be seen that the ex-parte decree was passed on 20.10.2023 and the application for setting aside the ex-parte decree has been filed on 11.07.2025. It was the specific case of the respondent that after the decree was passed, a demand notice by registered post was sent to the appellant, which was followed by filing of Execution Proceedings, wherein also notice sent by registered post was duly served on the appellant, however, the appellant did not care for the passing of the ex-parte decree and has sought setting aside of ex-parte decree after a passage of over 20 months, for which, except for the negligence and contempt for the court proceedings, no explanation is available.

10. It is very convenient to accuse the counsel for not informing the proceedings. As to what efforts were made by the appellant over a period of more than two years when Vakalatnama was filed by the appellant and application seeking setting aside ex-parte decree was filed, the affidavits are totally silent.

11. So far as the judgment in the case of **Rafiq** (supra) is concerned, the said judgment does not lay down the principle of universal application. The same has to be applied in the given facts and circumstances of the case. A grossly negligent client cannot be heard to accuse his counsel for not informing the proceedings in the suit/passing of the ex-parte decree.

12. In **Salil Dutta Vs. T.M. and M.C. Pvt. Ltd. : (1993) 2 SCC 185**, Hon'ble Supreme Court, distinguishing the judgment in the case of **Rafiq** (supra), came to the conclusion that as the defendant in the suit was a private limited company, the person incharge of the company was not a rustic villager and was not an innocent illiterate and unaware of court proceedings and consequently, 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 [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 disposed 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."

13. Recently, the Supreme Court in **Rajneesh Kumar and another Vs. Ved Prakash : (2024) SCC OnLine SC 3380**, referring to both **Rafiq** (supra) and **Salil Dutta** (supra), observed 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."

14. In view of the above factual and legal background in the present case, the appellant is running a commercial enterprise, against which suit was filed for dues of Rs. 46,82,771/- and for delay of 20 months in filing the

application, blaming the counsel without any further explanation for delay/overt act on the part of the appellant in finding out status of the suit, rejection of application seeking condonation of delay by the commercial court and consequential dismissal of application under Order IX Rule 13 C.P.C., cannot be faulted.

15. There is no substance in the appeal, the same is, therefore, dismissed.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

March 30, 2026

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