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MA-8014-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 18th OF SEPTEMBER, 2026

MISC. APPEAL No. 8014 of 2024

*YOGENDRA KUMAR CHADDA THROUGH POA KULDEEP
SAHGAL*

Versus

AA YUKAT AND OTHERS

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Appearance:

Ms. Rekha Shrivastava - Advocate for the appellant.

Mr. Rishabh Singh Chauhan - Advocate for respondent No. 1.

Mr. Anurag Tiwari - Advocate for LR's of respondent No. 2.
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Reserved on : 01/09/2026

Delivered on : 18/09/2026
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ORDER

This Miscellaneous Appeal is preferred by the appellant / applicant by taking exception to the order dated 02/09/2024 passed by IX District Judge, Indore (M.P.) in Misc. Civil Case No. 700009/2010, whereby the application moved by the applicant under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter for short referred to as, 'CPC'), was dismissed.

2) The facts suffice for disposal of this Miscellaneous Appeal are that the Ranjeet Narayan Haksar filed a petition under Section 307(5) of



the M.P. Municipal Corporation Act, 1956 (hereinafter for short referred to as, 'Act of 1956') seeking removal of alleged illegal construction raised by the appellant (hereinafter for short referred to as, 'applicant'), which was registered as MJC No. 08/2009, wherein the respondent No. 2 / petitioner (hereinafter referred to as 'petitioner') alleged that the applicant has raised construction contrary to the sanctioned map of House No. 1/2, Suraj Compound, Parsi Mohalla, Chhawani, Indore.

2.1) According to the petitioner, the applicant has raised certain construction contrary to the sanctioned plan and bylaws of the Corporation. The violation was complained to the Commissioner, Indore Municipal Corporation, Indore and as the Municipal Corporation failed to take any action against the applicant, the respondent No. 2 filed an application under Section 307(5) of the Act of 1956 for removal of the alleged illegal construction, which was pending before the Trial Court. The hearing date was fixed in the matter on 28/06/2010, when the applicant and his counsel remained absent before the Court. Consequently, the case was proceeded *ex parte* against the applicant and on 29/09/2010 decided finally against the applicant.

2.2) When the counsel for the applicant came to know on 05/10/2010 that the MJC case has been decided against the applicant *ex partely*, immediately after obtaining the copy of the final order, an application under Order IX Rule 13 of CPC for setting aside/recalling the *ex parte* order was moved on 06/10/2010 on behalf of the applicant



on the ground that on 28/06/2010 two MJC cases both filed by Ranjeet Narayan Haksar were listed before the Trial Court and due to mistake the Junior Advocate assisting the lawyer of the applicant noted the date of wrong case and thereafter, followed the another case in place of the subject case i.e. Ranjeet Narayan Haksar Vs. Commissioner, Indore Municipal Corporation, Indore. Along with the MJC copy of the Diary of lawyer was also annexed to satisfy the court that the *bonafide* mistake was committed by junior lawyer.

2.3) The petitioner vehemently opposed the application, the Power of Attorney of the applicant was examined in support of the application as well as Junior Advocate of the applicant was also examined. The petitioner also appeared as witness in favour of his reply. The Trial Court by the impugned order dated 02/09/2024 dismissed the application filed under Order IX Rule 13 of CPC on the ground that the reason assigned by the applicant that the Junior Advocate wrongly noted the date of different case, is not believable and declined to set aside the *ex parte* order. Hence, this Miscellaneous Appeal is preferred by the applicant.

3) Heard Ms. Rekha Shrivastava, counsel for the applicant, Mr. Rishabh Singh Chauhan, counsel for the respondent No. 1 and Mr. Anurag Tiwari, counsel for the legal representatives of respondent No. 2 for the purpose of final disposal of the case.

4) The counsel appearing on behalf of the applicant submits that



the MJC No. 08/2009 was listed on 28/06/2010 titled as Ranjeet Narayan Haksar Vs. Commissioner, Indore Municipal Corporation, Indore and MJC no. 12/2010 was also listed before the same court on the same date titled as Ranjeet Narayan Haksar Vs. Manakchand and due to *bonafide* mistake, junior counsel Abhijeet Dubey, Advocate noted the next date in the dairy given in MJC No. 12/2010 from the Board Diary and thereafter, started to follow the dates of the said case.

4.1) Counsel further submits that the mistake was *bona fide* as both the cases were filed by the same petitioner under Section 307(5) of Act of 1956 and therefore, this mistake was committed by the Junior Advocate of counsel for the applicant. She further submits that when the legal representatives of respondent No. 2 Dr. Sudheer Haksar disclosed the fact of *ex parte* decision of the MJC to the counsel for the applicant, immediately matter was inquired and application under Order IX Rule 13 of CPC was filed.

4.2) The counsel further submits that Abhijeet Dubey advocate appeared in witness box and supported the case of the applicant and copies of the relevant pages of the diary of the main lawyer were also produced before the Court. The petitioner in his statement simply denied the reason assigned by the applicant, however, accepted during the cross-examination that two different MJC cases i.e. 08/2009 and 12/2010 were pending before the same Court filed by the petitioner and an application was wrongly filed by the Junior Advocate of the counsel of the applicant



in MJC No. 12/2010 instead of MJC No. 08/2009.

4.3) The counsel further submits that the reason assigned by the applicant was *bona fide* and sufficient cause was shown by the applicant in support of his case, but the Trial Court erroneously held that the reason is not believable and dismissed the application. She prays for allowing the appeal and setting aside the *ex parte* decree passed against the applicant.

5) Counsel appearing on behalf of the respondent No. 1 opposed the appeal.

6) Counsel appearing on behalf of the respondent No. 2 submits that the applicant failed to assign any sufficient cause for his non-appearance in the case on 28/06/2010, therefore, in the absence of any good cause, the *ex parte* order cannot be set aside and recalled. The counsel has pointed out the certain sentences from the statement of Abhijeet Dubey, Advocate (AW-2) and submits that the statement of the advocate is not credible and thus, the Trial Court has not committed any error in dismissing the application filed under Order IX Rule 13 of the CPC.

7) Arguments advanced by counsel for the parties are considered and perused the record.

8) It is not in dispute that two MJC cases were pending in the same Court i.e. V District Judge, Indore on 28/06/2010 filed by the petitioner. The applicant has assigned reason that on that date, the Junior



Advocate of counsel for the applicant wrongly noted the date in the diary of the counsel from the Board Diary and thereafter followed the dates of MJC No. 12/2010 and consequently, the Court has proceeded *ex parte* against the applicant in MJC No. 08/2009 and passed *ex parte* final order on 29/09/2010.

9) Junior Advocate of counsel for the applicant Abhijeet Dubey appeared as witness No. 2 and supported the case of the applicant. Record of the MJC No. 12/2010 was also called during the examination of Abhijeet Dubey, Advocate and from the record of the MJC No. 12/2010 one application filed by Abhijeet Dubey, Advocate under Section 151 of CPC was also exhibited as Ex.-P/1, which was filed wrongly in MJC No. 12/2010 prepared for filing in MJC No. 08/2009. There is an endorsement of the Presiding Officer on the application, therefore, this fact cannot be denied that in MJC No. 12/2010 erroneously the Junior Advocate of counsel for the applicant filed the application, therefore, the statement of the counsel that he started to note the dates of MJC No. 12/2010 in place of MJC No. 08/2009 from the Board Diary are believable, otherwise there was no reason for the Junior Advocate of counsel for the applicant to file the application in MJC No. 12/2010.

10) This is a material fact, which has been clearly ignored by the Trial Court at the time of deciding the application filed by the applicant under Order IX Rule 13 of CPC by stating that the application was filed



in MJC No. 12/2010, therefore, not relevant.

11) It is trite law that for recalling and setting aside the *ex parte* order, the applicant should show sufficient cause. Reference may be had to the judgment of Supreme Court delivered in the matter of **Parimal Vs. Veena Alias Bharti** reported in (2011) 3 SCC 545, wherein Supreme Court has held that *ex parte* order cannot be recalled or set aside until and unless sufficient cause for non-appearance is shown by the party seeking recalling. Relevant paragraphs are extracted as under:-

"13. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much 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 view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that 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 & Ors. v. Rewa Coalfields Ltd., AIR 1962 SC 361; Sarpanch, Lonand Grampanchayat v. Ramgiri Gosavi & Anr., AIR 1968 SC 222; Surinder Singh Sibia v. Vijay Kumar Sood, AIR 1992 SC



1540; and Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation & Another, (2010) 5 SCC 459).

14. In Arjun Singh v. Mohindra Kumar & Ors., 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. Lala Kanshi Ram & Ors., AIR 1917 P.C. 156; Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee & Ors., AIR 1964 SC 1336; and Mata Din v. A. Narayanan, AIR 1970 SC 1953).

15. While deciding whether there is a 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 & Ors. v. Kameshwar Prasad Singh & Anr., (2009) 9 SCC 94 : AIR 2000 SC 2306; Madanlal v. Shyamlal, AIR 2002 SC 100; Davinder Pal Sehgal & Anr. v. M/s. Partap Steel Rolling Mills (P) Ltd. & Ors., AIR 2002 SC 451; Ram Nath Sao alias Ram Nath Sao & Ors. v. Gobardhan Sao & Ors., AIR 2002 SC 1201; Kaushalya Devi v. Prem Chand & Anr. (2005) 10 SCC 127; Srei International Finance Ltd., v. Fair growth Financial Services Ltd. & Anr., (2005) 13 SCC 95; and Reena Sadh v. Anjana Enterprises, AIR 2008 SC 2054)."

12) After considering the facts and circumstances of the case, in



view of this Court the applicant has satisfactorily explained the reason of non-appearance on 28/06/2010 and on subsequent dates. The reason assigned by the applicant is *bona fide* and its a mistake committed by Junior Advocate of counsel for the applicant.

13) It is settled position of law that a litigant should not be suffered due to the mistake committed by the lawyer. The lawyer not only filed the copies of the relevant pages of his diary, but also called the record of MJC No. 12/2010, wherein an application filed by the Junior Advocate of counsel for the applicant on 28/06/2010 was available alongwith the endorsement of the Presiding Officer with the signature and date, which conclusively proves that the Junior Advocate wrongly appeared in MJC No. 12/2010 and filed an application in that case, thereafter, noted the dates of that case. Application which was filed in MJC No. 12/2010 was prepared to be filed in MJC No. 06/2003 (old number of MJC No. 08/2009) and therefore, the reason assigned by the applicant cannot be disbelieved.

14) The applicant has proved the sufficient cause for non-appearance by adducing evidence of Junior Advocate and thus, the Trial Court has committed error in dismissing the application filed under Order IX Rule 13 of CPC.

15) Consequently, the order passed by the Trial Court dated 02/09/2024 cannot be given seal of approval. Resultantly, Miscellaneous Appeal is allowed and the impugned order dated 02/09/2024 is hereby



set aside. Impugned order dated 29/09/2010 is also set aside and MJC No. 08/2009 is restored to its original number for further consideration from the stage, when the case was proceeded *ex parte* against the applicant.

16) With the aforesaid, present appeal is allowed. Record of the Trial Court be returned along with copy of this order. No order as to costs.

(VINAY SARAF)
JUDGE

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