IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 5256 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO. 414 OF 2019

Aamby Valley Limited & Anr.)...Applicants

In the matter of:

AYG Realty Private Limited)...Plaintiff

Versus

Aamby Valley Limited & Anr.)...Defendants

Ms. Ambrin Khan with Mr. Aditya Chopra i/b. Victoria Legals, for the Applicants.
Mr. Shadab Jan with Mr. Aniruth Purusothaman i/b. Keerthi Purusothaman for the Respondent/Original Plaintiff.

CORAM : ABHAY AHUJA, J.

RESERVED ON: 24th APRIL, 2026
PRONOUNCED ON: 5th NOVEMBER, 2026

ORDER:

1. By this Interim Application, the Applicants viz. the original Defendants *inter alia* seek recall and setting aside of the *ex-parte* decree dated 29th July 2021.

2. On 18th December 2024, this Court had granted ad-interim relief in terms of prayer clause (c) of the Interim Application and stayed the

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operation, implementation and execution of the *ex-parte* decree pending hearing and final disposal of the present Interim Application.

3. The Applicant No. 2 viz. Qing Ambay City Developers Corporation Limited is the fully owned subsidiary of the Applicant No. 1 viz. Aamby Valley Limited, who statedly was an official designated developer of Aamby Valley City hill station. That the Applicants belong to the Sahara Group of Companies who is facing multiple legal proceedings which are *sub-judice* before the Hon'ble Supreme Court.

4. It has been submitted that in the year 2013, contempt proceedings were initiated against the promoters of the Sahara Group of Companies wherein the Hon'ble Supreme Court passed order dated 7th February 2018, of which the Respondent-Plaintiff has been in blatant disregard as they filed the Suit against the Applicants. Paragraph (viii) of order dated 7th February 2018 usefully reproduced:

> *"(viii) As this Court is in seisin of this matter, no other court in the country shall entertain any litigation pertaining to Aamby Valley City."*

5. It has been submitted that despite the subsistence of the said embargo, the Respondent instituted the Suit in 2019 and proceeded to obtain an *ex-parte* decree and that this Court would not have entertained the Suit if this Court had been made aware of the order

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dated 7th February 2018 of the Hon'ble Apex Court, and since the *ex-parte* decree has been obtained by playing fraud and misrepresentation on this Court therefore, the decree is erroneous, null and *non est* in the eyes of law and liable to be set aside.

6. It has been submitted that it was well within the knowledge of the Respondent that several proceedings filed against the Sahara Group of Companies were pending adjudication before the Hon'ble Supreme Court which is substantiated from order dated 28th November 2016, by which order, the Interim Application *inter alia* seeking direction to either pay the admitted dues or identify the plots from the Letter of Intent, filed by the Respondent and 17 others was withdrawn upon becoming aware that the Interim Application would not survive in view of the restrictions imposed by the Hon'ble Supreme Court on the sale of the immovable properties of the Sahara Group of Companies and a further direction to deposit any sale proceeds in the Hon'ble Supreme Court. It is further submitted that despite the said facts, the Respondent proceeded to file the Suit and obtained the *ex-parte* decree by suppressing orders of the Hon'ble Supreme Court.

7. Ms. Khan has taken this Court through various orders of the Hon'ble Supreme Court in proceedings against the Sahara Group of Companies as under:

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(a) order dated 21st November 2013 wherein the Sahara Group of Companies were directed not to part with any movable and immovable properties until further orders.

(b) order dated 26th March 2014 granting interim bail to the Contemnors, detained by virtue of the order of the Hon'ble Supreme Court, on the condition that they would deposit a sum of Rs.10,000 crores, of which Rs. 5,000 crores would deposited in the Hon'ble Supreme Court and for the balance, a Bank Guarantee in favour of S.E.B.I. would be deposited in the Hon'ble Supreme Court.

(c) order dated 4th June 2014 modifying order dated 26th March 2014 lifting the embargo only to the extent of permitting the Sahara Group of Companies to realise their assets to comply with order dated 26th March 2014.

(d) order dated 19th June 2015 granting time to the Contemnors to deposit the remaining balance amount that remained to be deposited subject to conditions.

(e) order dated 6th February 2017 directing attachment of the Aamby Valley property i.e. the Applicants herein.

(f) order dated 17th April 2017 appointing the Official Liquidator of this Court to conduct valuation of the Aamby Valley City and to proceed with the auction.

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(g) order dated 10th August 2017 rejecting the Application of the Contemnors to stop the auction and/or lift the attachment on the Aamby Valley property.

(h) order dated 23rd November 2017 appointing the Official Receiver of this Court in respect of the Aamby Valley City.

(i) order dated 7th February 2018 directing no other Court in the country to entertain any pending litigation pertaining to Aamby Valley City as the Hon'ble Supreme Court was in *seisin* of the matter.

(j) order dated 19th April 2018 permitting sale of portions of a particular parcel of the Aamby Valley property in consultation with the Architect, Official Liquidator and the Court Receiver.

(k) order dated 16th May 2018 continuing the auction.

(l) order dated 12th July 2018 permitting revenue generating activities and discharging the Official Liquidator and the Court Receiver from their duties upon noting that the Aamby Valley property could not be auctioned off.

(m) order dated 31st January 2019 directing the personal presence of the Contemnors as the direction to deposit the amount was not complied with.

(n) order dated 24th January 2020 dispensing personal appearance of the alleged Contemnors upon deposit of Rs. 41,58,99,001/-.

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(o) order dated 9th January 2023 issuing notice in all the pending applications and other directions.

(p) order dated 22nd April 2024 listing the proceedings for hearing on 3rd, 4th and 5th September 2024.

(q) orders dated 3rd, 4th and 5th September 2024 by which the Hon'ble Supreme Court disposed off all the proceedings filed in the Contempt Petition. Relevant portion of order dated 4th September 2024 passed in the Respondent's application(s) is usefully reproduced:

> *"Notwithstanding the pendency of the present proceedings and the order dated 07.02.2018, the applicant(s) are given liberty to proceed before any other forum with regard to the claims in accordance with law.*
> *.....*
> *We make no comments on the merits.*
> *All pleas and contentions are left open."*

8. It has been submitted that order dated 4th September 2024 merely grants liberty to proceed in accordance with law and keeps all contentions open but does not validate actions taken in violation of the order dated 7th February 2018 and that the illegality attached to the *ex-parte* decree therefore, continues to subsist.

9. It has been submitted that in the present Suit neither the writ of summons nor notice of hearing were received by the Applicants and therefore, the Applicants were unable to remain present before this

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Court. It has been further submitted that owing to a series of adverse orders passed by the Hon'ble Supreme Court, the functioning of the Company was severely disrupted and the management structure was in disarray and the Applicants were unable to effectively monitor proceedings. Ms. Khan has also taken this Court through orders in other proceedings initiated by the other parties against the Applicants wherein notice was served/received and the Applicants were duly represented to demonstrate that the Applicants diligently pursued legal proceedings initiated against them and never adopted a callous approach.

10. It has been submitted that the Applicants became aware of the *ex-parte* decree only upon receipt of notice of proceedings before the NCLT wherein the Applicant apprised the National Company Law Tribunal, Mumbai (the "NCLT") about the order dated 7th February 2018 after which the NCLT proeedings came to be adjourned *sine die* and the Applicants immediately approached this Court by way of Interim Application (L) No. 7153 of 2024 seeking stay on the execution of the decree which came to be granted by order dated 1st April 2024 and said Interim Application came to be disposed of by order dated 9th October 2024 with liberty to file these proceedings.

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11. Ms. Khan has submitted that the above facts clearly constitute sufficient cause for condonation of delay in filing this application and special circumstances for setting aside the *ex-parte* decree including the diligence and *bona fides* of the Applicants.

12. It has been further submitted that the above also demonstrate that the Respondent was fully aware of the order of the Hon'ble Supreme Court operating against the Sahara Group of Companies as also the Respondent had also approached the Hon'ble Supreme Court by way of an Interim Application which came to be withdrawn upon becoming aware of the prevailing restrictions and despite knowledge of the same, the Respondent failed to disclose the order of the Hon'ble Supreme Court to this Court while instituting and prosecuting the Suit.

13. Ms. Khan has submitted that the balance of convenience lies in favour of the Applicants as the present case is a clear instance where the decree is vitiated by lack of jurisdiction and abuse of process, warranting interference under Section 151 of the Civil Procedure Code (the "CPC") and this Court has inherent powers to recall orders obtained by suppression or in violation of binding judicial directions and therefore, the *ex-parte* decree be recalled, the Applicants be permitted to file their Written Statement and the Suit be heard on merits.

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14. Ms. Khan has submitted that, therefore, this Court may condone the delay and thereafter set aside the *ex-parte* decree dated 29th July 2021 and permit filing of the Written Statement.

15. On the other hand, Mr. Jan, learned Counsel appearing for the Respondent-Plaintiff has at the outset submitted that the Interim Application is *ex facie* barred by limitation as it has been filed after a delay of over three and half years from the date of the decree, and that the Applicants have neither filed an application seeking condonation of delay nor disclosed any reasons revealing sufficient cause or circumstances preventing them from appearing before this Court.

16. Mr. Jan has submitted that a perusal of the Bailiff's Report dated 5th July 2019 will confirm that a copy of the Plaint along with the writ of summons was served upon the Applicants on 13th April 2019 and as the Applicants failed to enter appearance, the Suit was set *ex-parte* vide order dated 8th July 2019 pursuant to which the order dated 29th July 2021 came to be passed by this Court thereby decreeing the Suit. It has been further submitted that the Applicants were also in receipt of the Respondent's Advocates letter dated 13th September 2021 wherein the Respondent had communicated and furnished copy of order dated 29th July 2021 and therefore, the writ of summons and the institution of proceedings was within the knowledge of the Applicants as also the fact

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that a decree had been passed however, the Applicants have not disclosed the same and have preferred the present Interim Application.

17. Mr. Jan has submitted that the Applicants have failed to make out any case to satisfy the ingredients and threshold required for invoking the powers of this Court under Order XXXVII Rule 4 of the CPC to recall the *ex-parte* decree dated 29th July 2021 as the Applicants have not set out any facts or circumstances by which the Applicants were prevented from approaching this Court and appearing in the Suit and therefore, in the absence of such reasons and facts constituting as sufficient cause or special circumstances, no relief can be granted in favour of the Applicants. It has been further submitted that the Applicants have also failed to set out any defense or response to the merits of the claim of the Plaintiff (Respondent herein) and such failure is a fatal defect which disentitles the Applicants from seeking any relief under Order XXXVII Rule 4 of the CPC.

18. Mr. Jan has further submitted that the Applicants have taken the order dated 7th February 2018 out of context and have unscrupulously extrapolated the same solely with the view to defeat the claim of the Respondent and to avoid any payment in execution of the decree. It has been further submitted that none of the orders passed by the Hon'ble Supreme Court grant blanket immunity from any debts or defaults

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committed by the Applicants and it was repeated defaults that led the Hon'ble Supreme Court to invoke their contempt jurisdiction against the Sahara Group of Companies and that the said order has to be appreciated in the context of the proceedings filed as well as orders passed prior as well as after 7th February 2018.

19. It has been submitted that despite directions of the Hon'ble Supreme Court, when the Court Receiver could not bring the properties in Aamby Valley City to sale, the Hon'ble Supreme Court by order dated 12th July 2018 not only discharged the Court Receiver and the Official Liquidator but also permitted revenue generating activities by the Sahara Group of Companies from which it is evident that even from its inception, the protective as well as enabling orders passed by the Hon'ble Supreme Court were never intended to restrain any party or person exercising their legal rights to avail their remedies before any Court of law against any of the Sahara Group of Companies. That in fact, the orders were only related with respect to the properties of such companies of the Sahara Group and had no bearing on any proceedings filed against such Companies.

20. It has been submitted that once the auction process formulated by the Hon'ble Supreme Court came to an end, the effect and force of order dated 7th February 2018 also came to an end and therefore, it is

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evident that the Applicants have sought to mislead this Court and presented a false narrative of the orders passed as well as the proceedings pending before the Hon'ble Supreme Court and accordingly, there was no bar imposed upon this Court to proceed with the Suit and pass the order dated 29th July 2021.

21. Mr. Jan has further submitted without prejudice to what has been submitted above that the Applicants never communicated the order dated 7th February 2018 to the Respondent and therefore, the decree cannot be deemed as illegal or void. It has been further submitted that out of abundant caution, the Respondent filed Interim Applications before the Hon'ble Supreme Court *inter alia* seeking clarification of the order dated 7th February 2018 wherein by order dated 4th September 2024, the Hon'ble Supreme Court conclusively clarified that the order dated 7th February 2018 in fact did not impose any restriction upon this Court from proceeding with the present Suit and as the Applicants were duly represented, as is apparent from the order, and upon examination of the matter including the full disclosure of the Suit and the decree already passed in favour of the Respondent, order dated 4th September 2024 came to passed, allowing prosecution of proceedings which culminated into the decree and the attempt on part of the Applicants to

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seek shelter under order dated 7th February 2018 is not only legally untenable but also entirely mischievous. That as regards the proceedings filed before NCLT, the Hon'ble Supreme Court further clarified that such proceedings may continue in accordance with law and therefore, by virtue of the same, the Hon'ble Supreme Court has clarified that no moratorium or restriction existed in the first place.

22. Mr. Jan has submitted that without prejudice to the aforesaid, the present Interim Application is barred by *res judicata* as the grounds and contentions raised by the Applicants were already raised in Interim Application (L) No. 7153 of 2024 and as the present Application is identical and *ad verbatim* similar to Interim Application (L) No. 7153 of 2024, the Applicant cannot raise the same grounds once again in the present Application and in view the above, this Interim Application be dismissed with costs.

23. Mr. Jan has further submitted that in case this Court is inclined to allow this Interim Application, this Court balance the equities and safeguard the interest of the Respondent and direct the Applicants to deposit the amount claimed in the Suit as a condition precedent to setting aside the *ex-parte* decree as also directed by the Hon'ble

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Supreme Court in the case of ***Mahesh Kumar Joshi Vs. Madan Singh Negi***[1].

24. Mr. Jan has also relied upon the following decisions in support of his contentions:

(i) ***Fast Track Express LLP Vs. Gas Logistics LLP***[2]
(ii) ***Karumili Bharathi Vs. Prichikala Venkatachalam***[3]
(iii) ***Bhakti Bh. Mondal Vs. Khagendra K. Banopadhya & Ors.***[4]
(iv) ***Ragho Singh Vs. Mohan Singh & Ors.***[5]
(v) ***Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors.***[6]
(vi) ***Sneh Gupta Vs. Devi Sarup & Ors.***[7]
(vii) ***Pathapathi Subba Reddy Vs. Special Dy. Collector***[8]
(viii) ***Madhusudan Shrikrishna Vs. M/s Emkay Exports, Mumbai & Ors.***[9]
(ix) ***Unilab Chemicals and Pharmaceuticals Vs. Smith Stanistreet Pharmaceuticals Ltd.***[10]
(x) ***Mahabir Singh Vs. Subash***[11]
(xi) ***Ajodhya Mahton Vs. Musammat Phul Kuer***[12]
(xii) ***K. R. Suresh Vs. R. Poornima***[13]

25. In rejoinder, Ms. Khan has submitted that the objection of the Respondent regarding the absence of a separate application for condonation of delay is unsustainable in law as it is trite law that

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1 (2015) 12 SCC 254
2 2024 SCC OnLine Del 2370
3 1999 SCC OnLine AP 168
4 1967 SCC OnLine Cal 37
5 2001 9 SCC 717
6 1999 8 SCC 304
7 (2009) 6 SCC 194
8 2024 INSC 286
9 2008 (6) Mh. L. J. 797
10 1999 SC OnLine Bom 135
11 (2008) 1 SCC 358
12 AIR 1922 Pat 479
13 2025 INSC 617

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where the substantive application itself contains all ingredients necessary for condonation of delay, insistence on a separate application would amount to adopting a hyper-technical approach as the procedure is intended to advance and not defeat the cause of justice. It has been further submitted that, it is settled law that delay can be condoned even upon an oral prayer where sufficient cause is otherwise made out before the Court and as the present Interim Application itself contains a complete chronology of events, the circumstances occasioning the delay and a detailed explanation constituting sufficient cause for the period in question, the objection raised on this ground deserved to be rejected.

26. As regards the contention of *res judicata*, Ms. Khan has submitted that Interim Application (L) 7153 of 2024 was filed only for the limited purpose of bringing the order of the Hon'ble Supreme Court on record and for the doctrine of *res judicata* to preclude the filing of a subsequent application, the prior application must have been disposed on its merits however, in the present case, the earlier application was not adjudicated on its substantive merits but was disposed of solely as a consequence of the subsequent order of the Hon'ble Supreme Court and in absence of any adjudication on merits, the present Interim Application is not barred by *res judicata*.

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27. Ms. Khan has submitted that the order dated 4th September 2024 merely granted liberty to proceed in accordance with law and kept all contentions open however it does not validate actions taken in violation of order dated 7th February 2018 and therefore, the illegality attached to the impugned decree continues to subsist.

28. Ms. Khan has relied upon the following decisions in support of her contentions:

(i) ***Dwarika Prasad (D) Thr. LRs Vs. Prithvi Raj Singh***[14]
(ii) ***Bhagmal & Ors. Vs. Kunwar Lal & Ors.***[15]
(iii) ***Shivamma (Dead) By Lrs Vs. Karnataka Housing Board & Ors.***[16]
(iv) ***L/Naik Mahabir Singh Vs. Chief of Army Staff***[17]

29. I have heard the learned Counsel and considered the rival contentions.

30. The present Application has been filed under Order IX Rule 13 read with Order XXXVII Rule 4 and Section 151 of the CPC *inter alia* to recall, set aside and stay the execution of the *ex-parte* decree dated 29th July 2021 passed by this Court in Commercial Summary Suit No. 414 of 2019. Affidavit-in-reply dated 31st January 2025 has been filed by the Respondent and Rejoinder dated 11th March 2025 has been filed by the Applicants.

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14 2024 INSC 1030
15 (2010) 12 SCC 159
16 2025 INSC 1104
17 1987 SCC OnLine SC 714

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31. While it cannot be disputed from the bailiff's report that the RPAD packet containing the writ of summons was served on 13th April 2019 and that, there cannot be a dispute that there has been a delay in filing this application, but at the same time, as can be seen from the chronology of orders including the order dated 7th February 2018 clearly directing that no other Court in the country to entertain any litigation pertaining to Aamby Valley City, it is believable that the company was not actively operational and although postally served, may not have been received by the concerned persons, more so in view of the order of the Hon'ble Supreme Court dated 7th February 2018, and the explanation given by the Applicants that despite the subsistence of the embargo vide the order of the Hon'ble Supreme Court, the Respondent instituted the Suit in 2019 and proceeded to obtain an *ex-parte* decree. As soon as the Applicants became aware of the *ex-parte* decree upon receipt of notice of proceedings before the NCLT, wherein the Applicants apprised the NCLT about the order dated 7th February 2018 and after which the NCLT proceedings came to be adjourned *sine die,* the Applicants immediately approached this Court by way of Interim Application (Lodging) No.7153 of 2024 filed on 29th February 2024 seeking stay on the execution of the *ex-parte* decree, which stay came to be granted by order dated 1st April 2024 and this Court on 9th

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October 2024 disposed of the said Interim Application with liberty to file these proceedings, this Interim Application having been filed on 28th November 2024. Apart from the fact that there was an embargo on any Court in the country entertaining any litigation pertaining to Aamby Valley City, the series of orders passed by the Hon'ble Supreme Court in various proceedings clearly indicate that the Applicants suffered severe disruption of the functioning and management structure of the company. The aforesaid facts, in my view, not only constitute sufficient cause for condonation of delay in filing the present application but also special circumstances to set aside the *ex-parte* decree under Order XXXVII Rule 7 of the CPC, as will be seen from the discussion hereinafter.

32. In fact, the *ex-parte* decree can be set aside only on the sole ground that despite the order dated 7th February 2018 clearly placing an embargo on every Court in the country not to entertain litigation pertaining to Aamby Valley City, the Plaintiff went ahead and filed the Suit in the year 2019. However, this Court for the sake of completeness has proceeded to deal with the various arguments of the Plaintiff.

33. As regards no application being filed to condone the delay, the Hon'ble Supreme Court, in the case of *Dwarika Prasad (D) through LRs (supra)*, while relying upon the decision of *Bhagmal & Ors. (supra)* has

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observed that even though a specific prayer for condonation of delay may not be there, the said technicality should not come in the way of deciding the request for condonation of delay as the question of delay is completely interlinked with the merits of the matter and as long as there is a valid explanation for the delay, this Court may condone the delay and not take a hyper-technical approach.

34. I, therefore, agree with Ms. Khan that the present application itself contains a complete chronology of events, the circumstances occasioning the delay and a detailed explanation constituting sufficient cause for the period in question.

35. In light of what has been held above, it would not be necessary to deal with the decisions in the case *Fast Track Express LLP (supra)*, *Karumili Bharathi (supra)*, *Bhakti Bh. Mondal (supra), Ragho Singh (supra)*, *Ramesh Chand Sharma (supra)* and *Sneh Gupta (supra)* as also which are in any event distinguishable on facts and do not aid the case of the Respondent.

36. Coming to the issue regarding the ingredients and threshold required for invoking the powers of this Court under Order XXXVII Rule 4 of the CPC to recall the *ex-parte* decree, it would be apposite first to quote Order XXXVII Rule 4 of the CPC, as under:

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> *" Order.XXXVII — Summary Procedure*
> *(1) …*
> *(2) …*
> *(3) …*
> *(4) Power to set aside decree — After decree the court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the court to do so, and on such terms as the court thinks fit."*
>
> (emphasis supplied)

37. Reading of the aforequoted Rule 4 clearly indicates that the said Rule empowers the Court which passed a decree under Order XXXVII to set aside the decree and grant one or both of the following reliefs, under special circumstances and if the Court deems it reasonable to do so and on such terms as the Court thinks fit :

(i) to stay or set aside execution, and
(ii) to give leave to the defendant (a) to appear to the summons, and (b) to defend the suit.

38. The Hon'ble Supreme Court in the case of ***Rajni Kumar Vs. Suresh Kumar Malhotra & Anr.***[18] has held that the expression "special circumstances" is not defined in the CPC nor is it capable of any precise definition by the Court. Ordinarily it connotes something exceptional in character, extraordinary, significant, uncommon, antonym of common, ordinary and general. In the said decision it has been held that it is neither practicable nor admissible to enumerate such circumstances.

[18] (2003) 5 SCC 315

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In an application under Order XXXVII Rule 4 of the CPC, the Court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so unusual or extraordinary as to justify putting the clock back by setting aside the decree; to grant further relief in regard to post-decree matters, namely, staying or setting aside the execution and also in regard to pre-decree matters viz. to give leave to the defendant to appear to the summons and to defend the Suit.

39. In the said decision it has also been provided that in considering an application to set aside the *ex-parte* decree it is necessary to bear in mind the distinction between the Suits instituted in an ordinary manner and Suits filed under Order XXXVII of the CPC. Rule 4 of Order XXXVII of the CPC specifically provides for setting aside a decree. In a Suit under Order XXXVII, the procedure for appearance of the Defendant is governed by the provisions of Rule 3 thereof. A Defendant is entitled to defend the Suit unless he enters appearance within 10 days of service of summons either in person or by a pleader and files in Court an address for service of notices on him. In default of his entering appearance, the Plaintiff becomes entitled to a decree for a sum not exceeding the sum mentioned in the summons together with interest and costs. The Plaintiff also becomes entitled to judgment in terms of Rule 3(6). If the Defendant enters appearance the Plaintiff is required

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to serve on the Defendant a summons for judgment within 10 days; from service of such summons for judgment the Defendant is to seek leave of the Court to defend the Suit which will be granted on disclosure of such facts as may be deemed sufficient to entitle him to defend and such leave may be granted to him either unconditionally or on such terms as the Court may deem fit.

40. The power under Rule 4 of the Order XXXVII is not just confined to setting aside an *ex-parte* decree, it extends to staying or setting aside the execution and giving leave to appear to the summons and to defend the Suit as the very purpose of Order XXXVII is to ensure an expeditious hearing and disposal of the Suit filed thereunder. Rule 4 empowers the Court to grant leave to the Defendant to appear to summons and defend the Suit if the Court considers it reasonable to do so. In such an application it is not enough for the Defendant to show special circumstances which prevented him from appearing or applying for leave to defend, he has also to show by affidavit or otherwise, facts which would entitle him leave to defend the Suit and that is why in Rule 4 the Court is also empowered to grant leave to the Defendant to appear to the summons and to defend the Suit, if the Court considers it reasonable to do so on such terms as the Court thinks fit in addition to setting aside the decree. Also it is not enough for the Defendant to

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show special circumstances which prevented him from appearing or applying for leave to defend but he has to show by affidavit or otherwise facts which would entitle him leave to defend the Suit.

41. Ms. Khan has taken this Court through the history of the proceedings before the Hon'ble Supreme Court commencing from the year 2013, including the order dated 7th February 2018 and finally the order dated 4th September 2024 and has demonstrated that the Applicants were unable to appear before this Court as the functioning of the Company was severely disrupted and the management structure was in disarray and the Applicants were unable to effectively monitor proceedings due to a series of adverse orders passed by the Hon'ble Supreme Court against the Sahara Group of Companies, which would also include the Applicants. Ms. Khan has also taken this Court through orders in other proceedings filed in this Court wherein on receipt of summons, the Applicants have duly been represented and also brought the order of the Hon'ble Supreme Court's order on record of the Court and this Court in all orders has refused to proceed further in view of the order of the Hon'ble Supreme Court.

42. I am therefore unable to agree with Mr. Jan as the circumstances as have been narrated above bring to light the reasons why the Applicants were unable to approach this Court when the Suit was

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instituted and also for the latter period till the filing of the Interim Application (L) No. 7153 of 2025. In my view, the said circumstances are uncommon and exceptional in character and justify putting the clock back by setting aside the *ex-parte* decree. The Applicants have shown the special circumstances which prevented them from appearing or applying for leave to defend when the *ex-parte* decree dated 29th July 2021 came to be passed.

43. The balance of convenience lies in favour of the Applicants as clearly the filing of the Suit does not observe the order of the Hon'ble Supreme Court dated 7th February 2018. It would be unfair and unjust, therefore, not to permit the Applicants to defend the Suit. However, since the Suit has been decreed for Rs.3,48,39,298/- along with interest at the rate of 9% per annum till the realization of the decretal amount, holding that the Defendants viz. the Applicants herein, owe money to the Plaintiff, this Court deems it appropriate to allow the application, subject to deposit of Rs.3,48,39,298/- in this Court, in terms of Rule 4 of Order 37 of the CPC, to balance the equities for setting aside the order dated 29th July 2021 in light of the decision of the Hon'ble Supreme Court in the case of *Mahesh Kumar Joshi (supra).*

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44. In the light of what has been held above, it would not be necessary to deal with the decisions in the case *Madhusudan Shrikrishna (supra), Unilab Chemicals* and *Pharmaceuticals (supra)* as also which are in any event distinguishable on facts and do not aid the case of the Respondent.

45. As can be seen, the aforesaid facts are so unusual and extraordinary that it would justify putting the clock back by setting aside the *ex-parte* decree. Mr. Jan's contention that the Applicants have taken the order dated 7th February 2018 out of context solely with the view to defeat the claim of the Respondent and that the said order has to be appreciated in the context of proceedings filed as well as orders passed prior as well as after 7th February 2018 is completely erroneous and misplaced. A perusal of the said order very clearly indicates the direction that no other Court in the country shall entertain any litigation pertaining to Aamby Valley City as the Hon'ble Supreme was in *seisin* of the matter, *albeit* in proceedings filed against the Sahara Group of Companies, however the Applicants form a part thereof, and it was only by the order dated 4th September 2024, liberty came to be granted by the Hon'ble Supreme Court in respect of proceedings before any other forum with regard to their claim in accordance with law. It is,

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therefore, very clear that this Court could not have entertained the proceedings filed against the Applicants had the Respondent made this Court aware of the absolute stay which continued to operate when the present Suit was filed as well as when the *ex-parte* decree came to be passed against the Applicants.

46. The order dated 1st April 2024 in Interim Application (Lodging) No. 7153 of 2024 granted stay on the execution of the *ex-parte* decree. Later on, on 9th October 2024, the said application came to be disposed in view of the order dated 4th September 2024 of the Hon'ble Supreme Court whereby the Applicants were permitted to take recourse to appropriate remedies as available in law, with liberty to take out proceedings including the proceedings under Order IX Rule 13 of the CPC to set aside the *ex-parte* decree. In my view, therefore, *res judicata* cannot apply to these proceedings.

47. Consequently, even the other decisions cited by the Respondent, although enunciating and elucidating the settled principles of law do not aid the case of the Respondent as also are distinguishable on facts and therefore, this Court has deemed it appropriate to not deal with the same.

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48. Accordingly, I am of the view that the Interim Application be allowed and the Suit be heard on merits.

49. Therefore, subject to the deposit of Rs.3,48,39,298/- in this Court within a period of four weeks from the date of uploading of this order, the Interim Application stands allowed in terms of prayer clauses (a), (b) and (c) which read thus:

> *"a) The present Application be allowed;*
>
> *b) This Hon'ble Court be pleased to recall and set aside ex-parte Decree dated 29.07.2021 passed by this Hon'ble Court in the captioned Suit;*
>
> *c) This Hon'ble Court be pleased to grant leave to Applicants to defend the Suit by filing its Written Statement"*

50. Let the Applicants file their Written Statement within a period of 30 days from the date of the deposit as above.

51. The Interim Application to accordingly stand allowed and disposed as above.

(ABHAY AHUJA, J.)

NIKITA YOGESH GADGIL

Digitally signed by NIKITA YOGESH GADGIL
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