2026 INSC 1182

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(@ SLP (C) NO.20884 OF 2024)

HIROO HOTCHAND ADVANI **APPELLANT**

VERSUS

INTEGRATED FINANCE COMPANY LIMITED AND OTHERS **RESPONDENTS**

WITH

CIVIL APPEAL NO. OF 2026
(@ SLP (C) NO.27307 OF 2024)

INTEGRATED FINANCE COMPANY LIMITED **APPELLANT**

VERSUS

HIROO HOTCHAND ADVANI AND OTHERS **RESPONDENTS**

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. Leave granted.

2. Since the judgment dated 14.08.2024 passed by the Division

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Date: 2026.01.02 16:48:52 IST
Reason:

Bench of the Madras High Court[1] in OSA No.112 of 2023 has been assailed in both these appeals, they are being decided together by this common judgment.

3. SLP(C) No.20884 of 2024 has been preferred by the fourth defendant since he is aggrieved principally by the condition imposed under the impugned judgment to pay a sum of ₹75,00,000/- to the first respondent-plaintiff as a condition for condoning delay of 423 days in filing an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the *ex parte* decree passed by the trial Court on 15.11.2021. SLP(C) No.27307 of 2024 has been preferred by the plaintiff since it is aggrieved by the impugned judgment condoning delay of 423 days in making an application for setting aside the aforesaid *ex parte* decree. For sake of convenience, the parties are being referred to as per their original status in the civil suit.

4. The plaintiff, a company incorporated under the provisions of the Companies Act, 1956, claims to have entered into various Hire Purchase agreements and an agreement of Lease with the defendant No.1-Business India, a partnership firm represented by

[1] For short, 'the High Court'

defendant Nos.2 to 4. According to the plaintiff, under the said agreements entered into with the first defendant, it had to recover an amount of ₹21,88,11,451.96/- from it as on 18.03.2010. It, therefore, filed CS No.530 of 2011 for recovery of the aforesaid amount along with future interest @ 36% thereon. The aforesaid suit was filed on 19.03.2010.

5. It appears that despite service, the defendants failed to appear before the trial Court, namely the learned Single Judge of the High Court. Hence, on 27.08.2021, defendant Nos.1, 2 and 4 were set *ex parte*. Defendant No.3 had in the meanwhile expired.

6. The plaintiff, thereafter, led evidence in support of its claim. The learned Single Judge by his judgment dated 15.11.2021 decreed the suit as prayed for.

7. The fourth defendant, on getting knowledge of passing of the *ex parte* decree, filed an application dated 15.02.2023 for setting aside the *ex parte* decree. He also filed an application for condoning the delay for 423 days in making the aforesaid application. According to the fourth defendant, the suit summons was not served on him. On making a search, he got information on 10.02.2023 that the suit summons had been received by Mr. Ravi Agrawal on 10.12.2011 but this fact had not been intimated to

him. On this and various other grounds, the first defendant prayed that the delay be condoned. This prayer was opposed by the plaintiff by filing a counter affidavit of its authorised signatory. All the grounds raised were denied and it was stated that the prayer made by the fourth defendant was lacking *bona fides*.

8. The learned Single Judge heard the application for condonation of delay. He found that the fourth defendant had appeared in the suit through his counsel and had also filed a common affidavit along with other defendants. He further observed that in all probability, the fourth defendant had knowledge of pendency of the suit prior to the *ex parte* decree being passed. He, therefore, held that the prayer made by the fourth defendant for condoning the delay lacked *bona fides*. Thus, by the order dated 17.03.2023, the said application was dismissed.

9. Being aggrieved, the fourth defendant preferred an appeal and challenged the aforesaid order. Various grounds in support of the prayer for condonation of delay were re-agitated including a ground that he was under a *bona fide* belief that the second defendant was looking after the proceedings and that the claim made in the suit was being settled. The plaintiff opposed the appeal by filing a counter affidavit of its authorised signatory. The Division

Bench by its judgment dated 14.08.2024 was of the view that the *bona fides* of the fourth defendant in filing an application for setting aside the *ex parte* decree belatedly could not be doubted. It was, therefore, of the view that the delay could be condoned by putting the fourth defendant on terms as he had failed to act with due diligence. After noting that the entire claim made by the plaintiff had been decreed *ex parte* with interest @ 36% per annum, it proceeded to set aside the order passed by the learned Single Judge refusing to condone the delay in filing the application for setting aside the *ex parte* decree. It, however, imposed a condition on the fourth defendant that he should pay a sum of ₹75,00,000/- to the plaintiff within a period of four weeks from the date of the order to enable that amount to be disbursed to various depositors. It, accordingly, permitted the fourth defendant to file his written statement within a period of four weeks and also directed expeditious disposal of the suit. As stated above, the fourth defendant as well as the plaintiff are aggrieved by the aforesaid judgment.

10. Mr. Siddharth Bhatnagar, learned Senior Advocate for the fourth defendant submitted that the Division Bench erred in imposing a condition of payment of ₹75,00,000/- to the plaintiff

while condoning the delay in making the application for setting aside the *ex parte* decree. According to him, on the Court being satisfied that an opportunity ought to be granted to the fourth defendant to contest the suit, the delay ought to have been condoned unconditionally. Assuming that the direction to the fourth defendant to pay a sum of ₹75,00,000/- as a condition for condoning delay was justified, that amount could not have been directed to be paid to the plaintiff for being, thereafter, disbursed to various depositors. The claim made by the plaintiff was seriously disputed and without considering the contentions of the fourth defendant, a direction to pay that amount to the plaintiff could not have been issued while condoning the delay. He, therefore, submitted that the impugned judgment to the extent it directs the fourth defendant to pay a sum of ₹75,00,000/- to the plaintiff for being further disbursed to the depositors be set aside.

11. Per contra, Mr. V.P. Raman, learned counsel appearing for the plaintiff would contend that the Division Bench committed an error in condoning the delay of 423 days in applying for setting aside the *ex parte* decree. Inviting attention to the grounds raised by the fourth defendant in seeking condonation of delay, he submitted that the application lacked *bona fides.* None of the

grounds raised by the fourth defendant for seeking condonation of delay warranted acceptance and the said application was rightly dismissed by the learned Single Judge. According to him, the fourth defendant sought to improve upon his case by raising additional grounds in the appeal, which grounds had not been raised before the learned Single Judge. Hence, the order passed by the learned Single Judge did not call for any interference.

11.1. Without prejudice to the aforesaid, it was submitted that the amount of ₹75,00,000/- as directed to be paid to the plaintiff was in view of such submission made on behalf of the fourth defendant before the Division Bench. It was, therefore, not permissible for the fourth defendant to now wriggle out of the said position. He further submitted that, in fact, a sum of ₹75,00,000/- as directed to be paid to the plaintiff was on a lower side considering the nature of the claim and the decree passed against the defendants. If at all the Court was inclined to maintain the order condoning delay, the fourth defendant could be directed to pay a higher amount to the plaintiff as a condition thereof.

12. We have heard the learned counsel for the parties and with their assistance, we have also perused the documents on record. At the outset, we may refer to the order dated 10.09.2024 passed

by this Court in the SLP(C) No.20884 of 2024 filed by the fourth defendant. The said order reads as under:

> "Application for exemption from filing a certified copy of the impugned judgment is allowed.
>
> From the point of view of the petitioner, the only fault which we can find with the impugned order is that a sum of Rs.75,00,000/- (Rupees seventy five lakhs) was directed to be paid directly to the first respondent-original plaintiff. In our, *prima facie* view, the Court ought to have directed the petitioner to deposit the said amount with the Registry which could have been invested for the time being.
>
> Issue notice returnable on 18th November, 2024.
>
> The execution of *ex parte* decree will remain stayed subject to condition of the petitioner depositing a sum of Rs.75,00,000/- (Rupees seventy five lakhs) with the High Court within a period of two months from today.
>
> If the amount is deposited by the petitioner, the amount shall be invested by the High Court with any Nationalized bank in an interest bearing fixed deposit, to be renewed until further orders.
>
> If the amount is not deposited by the petitioner within a period of two months from today, the interim relief of stay shall stand vacated without further reference to the Court.
>
> A copy of this order shall accompany the notice."

13. Pursuant to the aforesaid order, a sum of ₹75,00,000/- now stands deposited, albeit after some delay.

14. The question to be, thus, considered is whether the discretion exercised by the Division Bench in condoning the delay of 423 days in applying for setting aside the *ex parte* decree deserves to be interfered with. Yet another aspect that deserves consideration is whether the Division Bench was thereafter justified in directing the fourth defendant to pay a sum of ₹75,00,000/- to the plaintiff as a condition for the delay being condoned. Having considered the various grounds raised by the fourth defendant in his application

for condonation of delay as moved before the learned Single Judge as well as the supplemental grounds raised before the Division Bench, we are of the considered view that the discretion exercised by the Division Bench in condoning the delay cannot be said to be so arbitrary or irrational requiring this Court to interfere in exercise of its jurisdiction under Article 136 of the Constitution of India. An opportunity to contest the proceedings on merits having been granted to the fourth defendant by the impugned order, that exercise does not deserve to be thwarted. We are, therefore, not inclined to interfere with the discretion exercised by the Division Bench in condoning the delay of 423 days in making an application for setting aside the *ex parte* decree.

15. As regards the condition imposed by the Division Bench requiring the fourth defendant to pay a sum of ₹75,00,000/- to the plaintiff as a condition for the delay being condoned, we are of the view that while the direction of requiring deposit of a sum of ₹75,00,000/- as a condition for condoning delay would be reasonable, the further direction to pay that amount to the plaintiff at this stage appears to be unwarranted, especially when the fourth defendant seeks setting aside of the *ex parte decree.* While condoning delay of 423 days, the Division Bench could have

directed deposit of the sum of ₹75,00,000/-, which deposit could have abided by the final outcome of the proceedings. We are, therefore, inclined to make the interim direction issued by this Court on 10.09.2024 absolute by requiring the sum of ₹75,00,000/- to remain in deposit, subject to final outcome of the proceedings.

16. Coming to the submission made by the learned counsel for the plaintiff that the sum of ₹75,00,000/- as directed to be deposited as a condition for condoning the delay of 423 days is on a lower side, we do not find so. The discretion exercised in that regard does not warrant any interference. Instead, the ends of justice could be met by reserving liberty in favour of the plaintiff to request the Court to impose appropriate conditions on the fourth defendant while considering the prayer for stay of execution of the *ex parte* decree. Needless to state that such request if made, can always be opposed by the fourth defendant. We leave that aspect open for consideration. We also clarify that the observations made by the Division Bench in paragraph 7 of the impugned judgment shall not weigh with the learned Single Judge while considering the prayer for setting aside the *ex parte* decree. That prayer shall be considered on its own merits uninfluenced by any observations

made in the impugned judgment as well as in the present judgment. The contentions of the parties in that regard are left open.

17. Accordingly, the direction issued to the fourth defendant to pay the plaintiff a sum of ₹75,00,000/- for being disbursed to the depositors is modified by requiring the fourth defendant to deposit the said amount with the High Court, subject to final outcome of the proceedings. The said amount shall be invested in an interest bearing deposit. Both the Civil Appeals are disposed of in aforesaid terms with no order as to costs. Pending Interlocutory Applications are also disposed of.

.....J.
[UJJAL BHUYAN]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI,
OCTOBER 28, 2026.