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% 24.10.2011

Present: Mr. L.S. Solanki Advocate, for the petitioner.

+CMNo.19722/2011(exemption) in CM (M) No. 1261/2011
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Exemption allowed subject to just exceptions.

CM (M) No. 1261/2011 and CM No. 19721/2011 (stay)

The order impugned before this court is the order dated 24.09.2011 whereby the First Appellate Court had dismissed the appeal of the appellant under Order 43 of the Code of Civil procedure (hereinafter referred to as 'the Code') only on the ground of delay; there was a delay of 12 days in filing the appeal. Application filed under Section 5 of the Limitation Act had been rejected. Averments made in the application under Section 5 of the Limitation Act have been perused. The reason explained for the delay of 12 days was that two application filed by the plaintiff under Order 1 Rule 10 and Order 39 and Rules 1 & 2 of the Code were pending disposal; he was under bona fide impression that the applications had been listed for disposal; on 07.02.2011 when the order was passed by the trial judge, the impression of the petitioner bona fide was that the interim

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application had been disposed of; it was only later he came to know that the main application was disposed of.

In view of the aforementioned submissions, the delay in filing the appeal against the order dated 07.02.2011 is accordingly condoned. This order is passed subject to payment of Rs. 3,000/- to be deposited with the Delhi High Court Legal Services Committee. Trial Court shall proceed to deal with the merits of the appeal under Order 43 of the Code.

Petition is disposed of.

For appearance before the First Appellate Court to come up on 04.11.2011.

Dasti.



INDERMEET KAUR, J

October 24, 2011
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