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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ RFA 388/2013

RELIANT CONSTURCTION PVT LTD ..... Appellant

Through: Mr. Sumesh Kumar Lilothia, Director of the appellant.

Versus

BHARAT BHUSHAN YADAV ..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**O R D E R**

% **27.01.2016**

**CM No.2962/2016 (of the appellant for restoration of the appeal dismissed for non prosecution on 9th July, 2015) and CM No.2963/2016 (for condonation of 140 days delay in applying therefor).**

1. One person identifying himself as Mr. Sumesh Kumar Lilothia appears and states that he is the Director of the appellant; though the applications have been filed through counsel but Mr. Lilothia states that the counsel has refused to appear since the appellant did not pay his fee; he has been heard in person.

2. This first appeal under Section 96 of the Code of Civil Procedure, 1908 was preferred against a money decree consequent to failure to enter appearance and apply for defend and dismissal of application subsequently filed under Order XXXVII Rule 4 of the CPC.

3. The appeal came up first before this Court on 23rd August, 2013 along with applications for condonation of 90 days delay in filing the appeal and 190 days delay in re-filing of the appeal, when notice thereof was issued and subject to the appellant depositing the decretal amount in this Court execution was stayed.

4. The decretal amount was not deposited and no steps taken for service of the respondent inspite of several opportunities. Ultimately, when the counsel for the respondent appeared on 13th January, 2015, it was clarified that the appellant having not deposited the decretal amount as directed, there was no stay of execution.

5. Thereafter when the appeal was listed on 9th July, 2015 none appeared on behalf of the appellant and finding that there were applications for condonation of delay in filing and re-filing of the appeal and in the light of the conduct of the appellant, the appeal and the pending applications were dismissed for non prosecution.

6. The reasons given in the applications for condonation of delay in filing, re-filing of the appeal as well as in the application for condonation of delay in applying for restoration of the appeal are the same i.e. of illness of the mother of Mr. Lilothia, Director of the appellant. On enquiry Mr. Lilothia states that Mr. Manoj Kumar Jha is the other Director in the appellant company and he is not related to him.

7. There is no reason as to why owing to the illness of the mother of one of the Directors and of which also no documents have been filed, the appellant should pursue these proceedings in such negligent and lax manner.

8. The applications are thus not found to be disclosing any cause of action, neither for condonation of delay in filing this application nor for non appearance when the appeal was listed on 9th July, 2015.

Dismissed.

**RAJIV SAHAI ENDLAW, J**

**JANUARY 27, 2016/**'gsr'..