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

+ RFA 7/2003

SOMWATI

..... Appellant

Through: Mr. Rajinder Kumar Uppal, Advocate

versus

NAGARMAL YADAV

..... Respondent

Through: Mr. Ramesh C. Vats, Advocate with
Mr. Ashok Gurnani, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **10.02.2016**

CM APPL.4624/2016 (restoration), CM APPL.4625/2016 (stay) & CM APPL.4626/2016 (delay)

1. These are three applications. Application bearing No.4624/2016 is an application for restoration of the appeal which was dismissed for non prosecution.
2. Application bearing No. 4625/2016 is an application seeking stay against the order of dismissal in default dated 28.10.2015 and 14.12.2015 till the disposal of the application.
3. The third application bearing No.4626/2016 is an application seeking condonation of delay of 66 days in filing the aforesaid two applications.
4. I have heard the learned counsel for the appellant/applicant. The learned counsel for the appellant has contended that there is an application filed by the appellant under Section 340 Cr.P.C. and an FIR has also been registered against the respondent and therefore the appeal may be decided on merits. So far as the ground for delay is concerned, it has been stated that

after the dismissal of the appeal for non prosecution and the dismissal of an application for restoration on 14.12.2015, the appellant was advised by some counsel to file SLP but due to financial backwardness, he could not arrange fund and file the requisite appeal which resulted in wastage of time in getting legal opinion. The appellant has also stated that at times he thought about committing suicide.

5. I have considered the submissions and gone through the averments. The grounds which have been set up by the appellant seeking condonation of delay does not, in my considered opinion, constitute sufficient cause to be condoned for filing an application for recalling the order and readmission of the matter. Therefore, the application seeking condonation of delay is bereft of any logic or reason which will warrant the court to condone the delay. Accordingly, the application seeking condonation of delay is dismissed.

6. So far as application for restoration is concerned, this application also deserves dismissal on account of the fact that a perusal of the orders dated 28.10.2015 and 14.12.2015 clearly reflect the conduct of the appellant in indulging in dilatory tactics after obtaining the ad interim order against the judgment and decree by virtue of which the suit for specific performance of the respondent had been decreed. In addition to this, my learned predecessor while dismissing the application seeking restoration has taken note of the fact that the appeal was dismissed for non prosecution on as many as two occasions prior to 28.10.2015 and on both the occasions the application having been filed for restoration, the appeal was restored and yet this appeal was not taken by the appellant seriously to prosecute the matter. It clearly shows that the entire effort of the appellant is to keep the matter pending so that the respondent is not able to reap the fruits of hard earned decree in his favour. The application seeking restoration is accordingly totally frivolous, mischievous and dilatory and deserves to be dismissed.

7. Since the application for restoration has been dismissed, accordingly, the application seeking stay and the readmission of the matter is not maintainable, the same is also dismissed.

V.K. SHALI, J.

FEBRUARY 10, 2016

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