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

+ **CS (OS) 1304/2014**

SHEELA DEVI AND ORS. Plaintiffs
Through: Mr. Sonal Sinha and Mr. Naveen
Bansal, Advocates.
versus

KHAJANCHI LAL AND ANR. Defendants
Through: Mr. Arun Sharma and Mr. Rajesh
Sherawat, Advocates for D-1 along
with D-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
10.07.2018

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I.A. 8902/2017

1. This is an application seeking condonation of delay of 675 days in filing the application for setting aside the judgment and decree dated 29th June, 2017.
2. The brief background of the case is that the Plaintiffs filed the present suit for possession in respect of property bearing No.K-I-A/156, Gali No. 18, Sangam Vihar, New Delhi-110062, (Ground Floor and First Floor). The case of the Plaintiffs in the plaint is that 60 square yards of the property was given on license to the Defendants, upon payment of Rs.5,000/- per month. The Defendants did not agree to vacate the property upon demand by the Plaintiffs. Hence, the subject suit was filed for possession, recovery, and permanent injunction.
3. On 5th May, 2014, this Court had issued summons in the suit and also granted ad interim injunction directing that the Defendants shall not create

any third party interest or part with possession of the suit property.

4. The summons were returnable on 3rd September, 2014, however the Defendants remained unserved. On 3rd September, 2014, fresh summons were issued returnable on 28th November, 2014. A perusal of the process server report dated 19th November, 2014, which is on record, reveals that Smt. Kamlesh Nagar, Defendant No.2 was served with the summons. She accepted the pleadings and the summons both on her behalf and on behalf of her husband, Mr. Khajanchi Lal, Defendant No.1. The process server report of Sh. Manjeet Singh dated 19th November, 2014 is on record. In view of this report of the process server, the Registry put up a note that Defendant Nos. 1 and 2 are duly served. Considering the report of the process server and the Registry, this Court on 28th November, 2014 proceeded with the Defendants ex-parte, as none appeared for them.

5. Ex-parte evidence was thereafter filed by the Plaintiffs and the suit came to be decreed on 29th June, 2015 in the following terms:

“6. There is no rebuttal of the plaintiffs’ case by the defendants. In the circumstances, there is no reason why the reliefs sought in the suit should not be granted. The Court finds that the plaintiffs have made out a case for the grant of the reliefs as prayed for in the suit. The suit is accordingly decreed in terms of prayers (a), (b) and (c). Let a decree sheet be drawn up accordingly.”

6. The Plaintiffs filed execution proceedings before the District Court to execute the decree. The Court hearing the execution petition, appointed a Bailiff to take possession. The present application then came to be filed by the Defendants. The plea in the application is that the Defendants acquired knowledge of the decree, which was passed on 29th June, 2015, only on 12th

July, 2017. The plea of the Defendants is that when the Bailiff visited the suit premises on 12th July, 2017, the Defendants acquired knowledge of the decree passed by this Court. Learned counsel for the Defendants also submits that his clients have purchased the property from Shri Omkar Nagar and relies upon purported documents dated 15th February, 2000 and that they deserve to get an opportunity to put forth their defence on merits. Hence it is prayed that the delay of 675 days may be condoned.

7. On the other hand, learned counsel for the Plaintiffs relies upon the process server report dated 19th November, 2014 as also the Bailiff's report dated 31st January, 2017 annexed along with IA 1303/2018. As per the said Bailiff's report, the Bailiff who had visited the suit property on 31st January 2017, has made a categorical assertion that the warrants of possession was served upon Smt. Kamlesh Nagar.

8. It is, therefore, clear that on both occasions i.e. when the summons was served by this Court on 19th November 2014 as also when the Bailiff visited the suit property and served the warrants of possession on 31st January, 2017, the Defendants acquired knowledge, both of the suit as also the decree which was passed against them. The statement by the Defendants that they acquired knowledge on 12th July, 2017 is contrary to the Court record and thus is not accepted. The delay, is not liable to be condoned. Application is dismissed.

I.A. 8899/2017 (u/O IX Rule 13 CPC)

9. This is an application for setting aside the ex-parte judgment and decree dated 29th June, 2015.

10. In view of the findings above, condonation of delay has been rejected. This application is also dismissed.

I.A. 1303/2018 & I.A. 8900/2017

11. Stay of the execution, which was passed on 8th August, 2017, is accordingly vacated.

12. Application is allowed in the above terms.

I.A. 1304/2018 (delay)

13. This is an application for condonation of delay in re-filing the application dated 18th November, 2017 in I.A. 1303/2018.

14. The delay is condoned. Application is disposed of.

CS(OS) 1304/2014

15. The applications of the Defendants have now been dismissed. All other I.A.s are disposed of. Suit already stands decreed.

16. Copy of this order be given *dasti* to both the parties.

PRATHIBA M. SINGH, J.

JULY 10, 2018

Rekha