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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 21st April, 2015

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C.R.P. 55/2015

SUNIL KUMAR

..... Petitioner

Through: Mr. T.R. Kashyap, Advocate.

versus

SANDEEP KUMAR

..... Respondent

Through: None.

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C.R.P. 56/2015

SUNIL KUMAR SHARMA

..... Petitioner

Through: Mr. T.R. Kashyap, Advocate.

versus

SANDEEP KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No.7226/2015 (exemption) in C.R.P. 55/2015

CM No.7240/2015 (exemption) in C.R.P. 56/2015

Allowed, subject to all just exceptions.

C.R.P. 55/2015 and CM No.7225/2015 (Stay)

C.R.P. 56/2015 and CM No.7239/2015 (Stay)

1. Aggrieved by the orders dated 10th December, 2014 whereby the applications seeking condonation of delay and under Order IX Rule 9 CPC praying for setting aside the order dated 3rd April, 2014 dismissing the suits in default were allowed, Sunil Kumar, the Petitioner prefers the present petitions.

2. Two suits being Civil Suit Nos. 85/2013 and 86/2013 were filed by Sandeep Kumar, Plaintiff/Respondent seeking recovery of Rs. 3.20 lakhs and Rs. 4.50 lakhs along with the interest and cost. The said suits were dismissed in default on 3rd April, 2014. Thus Sandeep Kumar filed applications for condonation of delay and under Order IX Rule 9 CPC praying for setting aside of the order dated 3rd April, 2014. The explanation rendered was that Sandeep Kumar used to telephonically ask his counsel who assured that no personal presence was required. On 3rd April, 2014 Sandeep Kumar called his counsel and he was informed that the counsel was out of station and had requested his associate to appear before the Court. The next date before the learned Trial Court was informed to be 16th July, 2014. On 16th July, 2014 Sandeep Kumar again inquired from his counsel who stated that he was not aware of the case. On 30th July, 2014 Sandeep Kumar met his counsel who informed that the suits have been dismissed and handed over the certified copies of the order dated 3rd April, 2014. Thus it is prayed that the Plaintiff should not suffer for the consequence of his counsel.

3. Sunil Kumar, the Petitioner/Defendant had filed reply to the applications stating that false affidavits have been filed and no vested right accrued for restoration of the suits on frivolous applications. It was further stated that the Plaintiff personally appeared in another matter before the Court of learned Metropolitan Magistrate regularly, that is, on 25th April, 2014, 4th June, 2014, 18th July, 2014, 25th July, 2014 and 19th August, 2014. It was stated that five advocates had filed the vakalatnama on behalf of M/s Soni and Associates and one of the counsels was Ankur Garg and now putting the responsibility on one counsel, Ankur Garg has filed the

applications. No complaint has been filed for the unethical behaviour of the earlier counsel.

4. Vide the impugned orders the learned Trial Court relying on the decision of the Supreme Court in Collector Land Acquisition vs. Mst. Katiji and others, AIR 1987 SC 1353 held that the delay of about three months in filing the application for restoration of the suit is required to be condoned. The litigant Sandeep Kumar, the Plaintiff was under instructions from the counsel not to appear and on account of unethical practice of the counsel the Plaintiff cannot be faulted. Further no affidavit can be accepted from such a counsel. Thus condoning the delay the suits were restored subject to cost of Rs.2,000/-.

5. Before this Court learned counsel for Sunil Kumar reiterates the contentions and states that Ankur Garg was a counsel of the Respondent Sandeep Kumar and the subsequent application for restoration was filed by him putting the blame on one counsel. It is also stated that Sandeep Kumar has been regularly appearing in criminal complaint filed before the learned Metropolitan Magistrate.

6. The fact that Sandeep Kumar was regularly appearing before the learned Metropolitan Magistrate in the complaint case shows that Sandeep Kumar is a diligent litigant and since in the present suit he was advised by his counsel not to appear he did not personally appear on the dates fixed when he was informed about the dismissal of the suits, he immediately took remedies.

7. In Rafiq and another vs. Munshilal and another, 1981 (2) SCC 788 the Supreme Court held that the contesting parties should not suffer for the lapses on the part of their counsels. It noted that there was no fault of the

party who having done everything in his power expected by him would suffer because of the default of his advocate.

8. Consequently, I do not find any illegality or perversity in the impugned orders exercising its discretion to condone the delay and restore the suits to their original positions subject to cost of Rs. 2,000/-.

9. Petitions and applications are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 21, 2015
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