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

+ **FAO 196/2015**

NAVEEN SAGGI

..... Appellant

Through: Mr Kapil Hans & Mr Puneet Saini,
Advs.

versus

PREM LATA VERMA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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06.07.2015

CM No. 11336/2015 (Condonation of Delay)

1. This is an application seeking condonation of delay in filing the appeal. The delay, even according to the appellant, is of 46 days.
2. For the reasons given therein, the application is allowed and the delay is condoned.

CM No. 11334/2015 (Exemption)

3. Allowed subject to just exceptions.

FAO 196/2015 & CM No. 11335/2015 (Stay)

4. The appellant, who is the original defendant in the suit filed in the trial court, is a tenant on the fourth floor of the property located at B-52, Lajpat Nagar-II, New Delhi 110024. The appellant is aggrieved by the impugned order dated 12.01.2015 passed by the trial court in favour of the respondents herein, on an application filed by her under Order 39 Rule 10 of the CPC. The principal grievance of the appellant, is that, while the issue

qua the recovery of money which includes damages, is pending adjudication, the said application has been allowed. My attention for this purpose has been drawn to issue no.4 struck by the trial court.

5. To be noted, issues were framed by the trial court vide order dated 25.03.2015. One of the issues which has been framed, as indicated above, is issue no. 4. The said issue is extracted hereinbelow for the sake of convenience:

“...4. Whether plaintiff is entitled for the recovery of money of Rs. 2,75,000/- as damages @ 400/- per day w.e.f. 11.07.2011 to May, 2013 and interest of Rs. 62,000/- on the said amount? OPP...”

6. The trial court vide the impugned order records the following facts which are not disputed before me:

- (i) A lease agreement dated 26.09.2010 was executed between the appellant and the respondent.
- (ii) The rent referred to in the aforesaid lease agreement is Rs. 5600/- per month;
- (iii) There is no dispute that since July, 2011, the appellant, has not paid the rent to the respondent and
- (iv) That the plaintiff is a class-I heir of the deceased Sh. S.C. Verma.

7. Apart from the above, I find on perusal of the written statement, on which much reliance was placed by the learned counsel for the appellant, that it is not in dispute, that the, respondent herein is the wife of late Sh. S.C. Verma, contrary to what was sought to be argued by the learned counsel for the appellant before me today.

8. Having faced with the aforesaid, learned counsel for the appellant

seeks disposal of the appeal with a direction that in case issue no. 4 was to be found in favour of the appellant by the trial court, then necessary orders would be passed for recouping the money paid in the interregnum as directed by the impugned order by the learned trial judge.

9. The suggestion of the appellant seems reasonable. Accordingly, the appeal is disposed of with a limited direction that if issue no.4 is found in favour of the appellant, appropriate directions will be issued by the trial court for recouping the money. At that stage the trial court will be free to adjust the equities. This direction really is what the trial court is, in any case, bound to do if the said issue is found in favour of the appellant. Therefore, no notice need be issued to the respondent. Accordingly, no further orders are called for in the appeal.

10. At this stage, learned counsel for the appellant seeks extension of time to comply with the impugned order. I am sure, if the appellant were to approach the trial court, the learned judge would issue appropriate directions for extension of time keeping in mind the fact that the appellant had approached this court.

11. A copy of this order will be dispatched by the registry to the respondent.

RAJIV SHAKDHER, J

JULY 06, 2015

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