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

+ RFA 518/2015

CHETAN SAPRA

..... Appellant

Through: Mr. S.K. Gulati, Mr. Rakesh Kumar and
Ms. Divya, Advocates

versus

DARSHANA RANI

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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05.08.2015

CM No.13863/2015 (Exemption)

1. Allowed subject to just exceptions.

CM No.13864/2015 (condonation of delay)

2. This is an application seeking condonation of delay of 217 days in filing the appeal.

3. The appeal has been filed against a judgment and decree dated 23.08.2014 whereby the appellant/defendant no.1 was sued for recovery of money amounting to Rs.3,46,500/-.

3.1 To be noted, defendant no.2 in the suit is the proprietorship concern of appellant / defendant no.1.

3.2 The trial court records that since upon summons in the suit being served, no appearance was put in by the defendants (which included appellant /defendant no.1), they were proceeded exparte.

3.3 This order came to be passed on 20.12.2012. It is averred in the

captioned application that appellant / defendant no.1 became aware of the impugned judgment and decree only on 13.03.2015 when, he visited the office where he was originally located i.e. E-63, Vishnu Garden, New Delhi-110 018 (in short the Vishnu Garden premises).

3.4 The case of the appellant / defendant no.1 appears to be that in the month of October 2012, he had shifted out from the Vishnu Garden premises and commenced his operations from the new office located at F-5, Deewan House, Commercial Complex, Ajay Enclave, Subash Nagar, New Delhi-110 018 and, therefore, the reports submitted by the process server dated 02.01.2013 and 12.03.2013 showing service are false and manipulated.

3.5 The reasons supplied by the appellant / defendant no.1 for shifting from Vishnu Garden premises is, that the owner of the said premises had decided to sell the premises in June 2012, whereupon the appellant / defendant no.1 vacated the said property in October 2012.

3.6 Though these are not averments made in the captioned application, my attention has been drawn by the learned counsel to paragraphs 8 and 9 of the grounds of appeal.

3.7 On a query being raised with the counsel as to what material, if any, had been put on record to demonstrate that the appellant / defendant no.1 had shifted out from Vishnu Garden premises, the learned counsel concedes that no material has been placed on record to establish the said assertion.

4. Therefore, the averments in my view are bald; being not supported by any material which would have me believe that after

October 2012, the appellant / defendant no.1 was not available at the Vishu Garden premises. This is specially so, as the trial court has in fact relied upon the report of the process server which is indicative of the fact that there was refusal of service on 20.12.2012 when, appellant / defendant no.1 was proceeded exparte.

5. In these circumstances, I am of the view that the delay of which condonation is sought by the appellant/defendant no.1 cannot be granted. Accordingly, the application is dismissed.

RFA 518/2015 and CM No.13862/2015 (stay)

6. As a result of order passed in CM No.13864/2015, the captioned appeal and the application have been rendered infructuous, and are accordingly, dismissed as well.

RAJIV SHAKDHER, J

AUGUST 05, 2015

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