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

% Judgment delivered on: 30.07.2015

+ **FAO (OS) 390/2015**

SURYADEEP GARG @ SURAG GARG

.... Appellant

versus

NEHA GARG & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr J.P.Sengh, Senior Advocate with
Ms Indu Shekhar and Ms Vanessa Singh, Advocate.

For the Respondents : None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.12889/2015(exemption)

Exemption is allowed, subject to all just exceptions.

FAO(OS) 390/2015 & CM No.12888/2015(condonation of delay)

1. This is an appeal against the order dated 27.04.2015 passed by the learned Single Judge in IA No.7368/2014, which application was filed under Order IX Rule 9 CPC for restoration of the suit, which was dismissed for non-prosecution on 14.08.2013. The said application was filed after a delay of 567 days. In fact, the present appeal has also been filed after a delay of 40 days.

2. It is the case of the appellant/plaintiff that he had missed the date of hearing on 14.08.2013 and could not keep track of the present case. The learned Single Judge has examined this plea of the appellant/plaintiff. He noted that in paragraph 8 of the application itself, it had been stated that the counsel for the appellant/plaintiff had informed him that he would not be appearing in the case if his professional charges were not paid immediately. Despite notice of this fact, the advocate's professional charges were admittedly not paid. The learned Single Judge observed that the explanation sought to be given by the appellant/plaintiff that he did find out about the status of the case between 14.08.2013 to 18.03.2015 was not believable, particularly, in view of the fact that the litigation is essentially one between the appellant/plaintiff and his wife. In fact, according to the learned senior counsel appearing on behalf of the appellant, there are several litigations, both civil and criminal, going on between the appellant/plaintiff and his wife. The application under Order IX Rule 9 CPC clearly stated that on more than one occasion, the advocate of the plaintiff/appellant had informed him that he would not be appearing in the case further if his professional charges were not paid. Admittedly, the professional charges were not paid and on 14.08.2013, the advocate did not appear. We may point out that on earlier occasions, the appellant/plaintiff was appearing in Court along with his advocate or by himself. We may also point out that the appellant/plaintiff has also been changing his advocate from time to time.

3. It is, in these circumstances, that the learned Single Judge took the view that the explanation given by the appellant/plaintiff that he had lost track of the present case could not be accepted. In the opinion of the learned Single Judge, considering the averments made in the application, it was evident that the delay on the part of the appellant/plaintiff was deliberate and the explanation extended was false and an afterthought and, therefore, did not constitute 'sufficient cause' in respect of the delay of 567 days in filing the application under Order IX Rule 9 CPC.

4. We do not see any reason to differ from the view taken by the learned Single Judge. We may point out that the learned senior counsel appearing on behalf of the appellant has placed before us a Supreme Court decision in the case of **Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani** : AIR 1993 SC 1182. First of all, that decision was one in respect of a petition under Article 226 of the Constitution and did not relate to suit proceedings. In any event, the said decision in paragraph 4 clearly indicates that there was nothing on record to show as to whether the petitioner had the notice of the hearing of the case on that day. In the present case, we find that the appellant had clear notice that in case he did not pay the professional charges of the advocate, the latter would not appear. It is an admitted case that the appellant/plaintiff had not paid the professional charges of the advocate. Therefore, he had clear notice of the fact that the advocate would not appear on the next date of hearing. The Supreme Court decision referred to by the learned senior counsel appearing on behalf of the appellant would not come to the aid of the appellant/plaintiff who, in the present case, has not been able to give a plausible explanation for the delay.

Accordingly, the appeal and the application for condonation of delay are dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JULY 30, 2015
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