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

+ **FAO 370/2015**

MEHBOOB ALAM Appellant
Through: Mr M.M. Kashyap, Adv.

versus

KHUSHAL SINGH Respondent
Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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20.10.2015

CM No. 24523/2015 (Exemption)

1. Allowed subject to just exceptions.

CM No. 24524/2015 (condonation of delay of 7 months 22 days in filing)

2. This is an application seeking condonation of delay of 7 months and 22 days in preferring the appeal. To be noted, the context in which the captioned application has been filed is as follows:

2.1 The respondent/ plaintiff had filed a suit for possession and arrears of rent in the sum of Rs. 1,39,050/-. Summons in the suit were issued. The appellant/ defendant, despite service, did not file his written statement, therefore, the trial court proceeded to close the opportunity to file the written statement, vide order 27.04.2013. Thereafter, the trial court, permitted the respondent/ plaintiff to prove his case. Pertinently, in the appeal filed before the learned ADJ, it is averred that the appellant / defendant had filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) which was dismissed by the trial court.

2.2 A perusal of the original judgement and decree dated 19.12.2013 would show that the respondent / plaintiff proved three principal aspects with respect to his suit:

(i) That there was a landlord-tenant relationship obtaining between the parties. In other words, the appellant/ defendant was the tenant of the respondent/ plaintiff.

(ii) That the rent of the suit property was more than Rs. 3500/- and hence the action fell outside the purview of the Delhi Rent Control Act, 1958 (in short the DRC Act).

(ii)(a). In this connection, it is observed, on a perusal of paragraph 12 of the impugned judgment that a notice under Section 6A of the DRC Act was issued which resulted in an enhancement of monthly rent to a sum of Rs. 3850/- w.e.f 15.01.2012.

(iii) That a notice under Section 106 of the Transfer of Property Act, 1882 dated 01.03.2012 was issued and served on the appellant/ defendant.

2.3 It is, upon receipt of proof qua these aspects, that the trial court proceeded to pass a decree for possession and recovery of rent in the sum of Rs. 1,39,050/-, with interest, at the rate of 9% per annum from the date of institution of the suit till realization.

2.4 The appellant/ defendant filed an appeal before the Addl. District Judge, which was dismissed on 22.08.2014.

2.5 Thereafter, the appellant / defendant filed an application under Order 9 Rule 9, which was also dismissed on 16.01.2015. The plea taken in the said application, was that, the appellant's/defendant's counsel could not remain present as he had to appear before a court at Allahabad, on 23.08.2014. Curiously enough, Mr Kashyap, who appears for the appellant/

defendant, says that the copy of the application filed under Order 9 Rule 9 of the CPC has not been filed with the present appeal.

2.6 The reason that I asked Mr Kashyap to supply a copy of the application is that there is an observation in the order dated 16.01.2015 that the ground projected for non-appearance on 23.08.2014 before the trial court was that the counsel had to file an appeal before a court at Allahabad, on 23.08.2014. As to whether the counsel actually filed an appeal before a court in Allahabad, and for that purpose had proceeded to Allahabad, cannot be discerned from the record placed before me. This aspect is important, in context of the observation made by the Ist appellate court in the order dated 22.08.2014, that an application had been moved on behalf of the main counsel for the appellant / defendant that the appeal be adjourned for a period of one month. The application for adjournment was, evidently, drafted by the main counsel. There is no ground taken in the appeal filed before me, refuting this observation of the court.

2.7 Continuing with the narrative, the Ist appellate court in the order dated 16.01.2015 has noted that even the appellant / defendant was not present. Notwithstanding the above, as indicated above, there is nothing on record, to establish that the reason given for non-appearance of the counsel on 23.08.2014, is genuine and bonafide. The very fact that an application was filed, by which the counsel for the appellant / defendant sought adjournment for a period of one month stretches credulity, to say the least.

2.8 What has compounded the injury vis-a-vis the respondent/ plaintiff, is that, thereafter the appellant /defendant took recourse to a wrong remedy against the order dated 16.01.2015 by filing a petition under Article 227 of the Constitution. The said petition came to be dismissed as withdrawn on

08.10.2015, with liberty to avail of an appropriate remedy.

3. It is in this context that the accompanying appeal has been filed with the captioned application for condonation of delay.

4. According to me, the appellant/ defendant has only compounded the miseries of the respondent/ plaintiff; firstly, by not filing a written statement; secondly, by adopting, perceptibly, dilatory tactics of filing an appeal, and having that dismissed, and then, moving an application under Order 9 Rule 9 of the CPC; and lastly, by taking recourse to a remedy, which was, at the very inception, not the correct remedy – with the result, though the respondent/ plaintiff, has a judgement and decree in his favour (which was passed as far back as on 19.12.2013), he has not been able to enjoy the fruits of the decree.

5. In these circumstances, in my view, the appellant/ defendant has failed to establish sufficient cause for condonation of delay. The appellant/ defendant, in my opinion, has been clearly negligent in prosecuting the case and taking recourse to appropriate remedies that may have been available to him, in law, at the relevant point in time.

6. Accordingly, the application for condonation of delay is dismissed.

FAO 370/2015 & CM No. 24522/2015 (Stay)

7. In view of the fact that CM No. 24524/2015 has been dismissed, the appeal and the captioned application will suffer the same fate. Consequently, the appeal and the captioned application are also dismissed.

RAJIV SHAKDHER, J

OCTOBER 20, 2015

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