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

\+ MAT.APP.(F.C.) 47/2015 & CM APPL.2806-2807/2017 (For restoration)

RAHUL GADODIA ..... Appellant

Through: Mr. Rakesh Patiyal, Advocate.

versus

SWATI GUPTA ..... Respondent

Through: Mr. Maneesh Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

% **08.05.2017**

CM No.2806/2017 (by the appellant for setting aside the order dated 12.11.2016).

CM No.2807/2016 (by the appellant for condonation of 30 days delay in filing of application).

1. The present application has been filed by the appellant seeking condonation of delay of 30 days in filing the application for restoration of the appeal, which was dismissed vide order dated 17.11.2016.

2. It is pertinent to note that on 14.10.2015, the Trial Court Record was summoned and the appeal was directed to be listed for arguments on 11.02.2016.

3. On 11.02.2016, appearance was entered on behalf of the respondent and learned counsel for the respondent had stated that after exhausting the statutory period of limitation for filing an appeal and on not receiving a notice about the said filing, the respondent had got re-married on 03.05.2015 and the said marriage was registered on 11.05.2015. It was noted in the

said order that the decree of divorce was passed by the Family Court, Central District, Tis Hazari Courts, Delhi on 02.02.2015 and the appellant had filed the present appeal on 21.03.2015, after exhausting the entire period of limitation.

4. In view of the aforesaid submission, learned counsel for the appellant had sought a short adjournment to take instructions and the matter was renotified for 16.02.2016. On 19.08.2016, none had appeared for the appellant and the appeal came to be dismissed for non-prosecution. The appellant had then filed an application for seeking restoration of the appeal (CM No.31210/2016) on which notice was issued to the respondent, returnable on 20.09.2016. On 20.09.2016, the appeal was restored to its original position.

5. Thereafter, the said appeal came up for final arguments in the regular cause list, in due course on 17.11.2016. After taking note of the fact that the said appeal was listed at serial No.9 in the list of Final Hearing Matters and was effectively at serial No.5 on 16.11.2016 and though counsels for the parties were aware of the status of the regular board of the said Court, none had appeared for the appellant, the appeal was yet again dismissed in default and for non prosecution.

6. Now, another application has been filed by the appellant for restoration of the appeal. The explanation offered in the application is that the appellant and his counsel did not expect the appeal to come up for hearing so early and they were under the impression that the same would come up for final hearing some time in the year 2017. As a result, neither the appellant nor his counsel bothered to check the cause list.

7. We are not at all impressed by the explanation offered by the

appellant for seeking restoration of the appeal, particularly, in the background narrated above. This is the third time that a request for restoration of the appeal is being made.

8. We decline to endorse such a casual and indifferent approach to a pending litigation, particularly, when both the appellant and his counsel had remained absent, knowing very well that the appeal had been dismissed earlier and restored on 20.09.2016 and the case was duly reflected in the Regular Cause List circulated to the members of the Bar, effective from 18.11.2017. They were therefore expected to be more vigilant in pursuing the appeal this time.

9. At this stage, learned counsel for the appellant states that his client would be satisfied if the respondent can demonstrate that she has got remarried as she has failed to file any document in support of the said position.

10. In response, learned counsel for the respondent has drawn our attention to the documents placed at pages 101 and 102 of the paper book, filed by the respondent along with the written submissions, under index dated 04.04.2016. The document at page 101 is the Marriage Certificate of the respondent with one Sh. Ankit Sehgal, issued on 03.05.2015. The document at page 102 is the Marriage Certificate of the aforesaid parties dated 11.05.2015, issued by the Registrar of Marriage. Learned counsel for the respondent submits that as of now, the respondent is on the family way.

11. In the aforesaid facts and circumstance, when the appellant has been grossly negligent in pursuing the present appeal and has failed to offer any cogent reason for the Court to restore the appeal, we see no reason to allow the present applications.

12. Even otherwise, the respondent has filed documents that amply demonstrate that she had got remarried in May 2015. Therefore, no useful purpose will be served by restoring the appeal.

13. Both the applications are accordingly dismissed as being devoid of merits.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 08, 2017
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