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

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**C.R.P. 64/2015**

**TATA POWER DELHI DISTRIBUTION LTD** ..... Petitioner

Through Mr.K.Datta and Mr. Manish  
Srivastava, Advocates.

Versus

**UPENDER MEHTA & ANR** ..... Respondents

Through Mr.Pradeep Kumar, Advocate for  
R-1.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

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**03.03.2016**

**C.M. No. 26693/2015 (for condonation of delay in depositing decretal amount)**

The delay in depositing the decretal amount is condoned. The decretal amount along with interest which stands deposited with the Registrar General of this Court is taken on record.

Application disposed of.

**C.R.P. 64/2015 & C.M. Nos.7991/2015, 15164/2015, 26693/2015**

The order impugned before this Court is the order dated 12.11.2009. Vide this order, the application filed by the petitioner seeking condonation of delay of 34 days in filing Regular First Appeal (RFA) was dismissed. The petitioner thereafter preferred Regular Second Appeal (RSA). The appeal was permitted to be

withdrawn as the Bench of this Court had noted that proper course would be to file a Revision Petition which had thereafter been filed. The present Revision Petition is now pending in this Court.

This is a suit for recovery of Rs.1,35,312/- which had been filed by the respondent (Upender Mehta) against two defendants namely M/s Bimal Associates and North Delhi Power Ltd. Evidence was led and thereafter a decree was passed by a judgment dated 28.02.2014. A decree in the sum of Rs.85,000/- plus interest had been passed against defendant no.2 and a decree in the sum of Rs.3750/- plus interest had been passed against defendant no.1. Defendant no.1 did not file any appeal. The RFA was filed by defendant no.2. As noted supra there was a delay of 34 days in preferring this RFA.

Averments made in the application under Section 5 of the Limitation Act have been perused. It has been stated in the application that after the judgment dated 28.02.2014 was passed the appellant had applied for certified copy on 05.3.2014 which was prepared on 11.3.2014. The certified copy of the case was sent to the Department i.e. the Office of the Tata Power Delhi Distribution Ltd. (the name of defendant no.2 stood changed since then). The legal opinion for filing the appeal was received and pursuant thereto the appeal was filed which was to be filed latest by 04.4.2014 it was because of the late receiving of the file which has been sent for the legal opinion that there is a delay of 34 days in filing that appeal. Further contention was that this delay was not deliberate and intentional but due to bonafide reason and as such being a sufficient cause, the delay may be condoned.

Learned counsel for the respondent submits that this explanation is no explanation in the eye of law. Each and every day delay has to be explained. To support his submission, he has placed reliance upon 118(2005) DLT 286 (DB) General Manager Northern Railway Vs. Vishwa Nath Nangia . Per contra, learned counsel for the petitioner has placed reliance upon (1987) 2 SCC 107 Collector, Land Acquisition Anantnag and Anr. Vs. Mst Katiji and Ors. wherein the Supreme Court had held that the words “sufficient cause” employed in Section 5 of the Limitation Act must be given a liberal and justice oriented approach and no discrimination should be made merely because the State is seeking a condonation of delay. Noting this ratio as also the delay which in this case is of 34 days this Court is inclined to condone the same.

A Regular First Appeal is a matter of right, unless and until there is a malafide attributed to the petitioner, the explanation furnished by the learned counsel for the petitioner (in the application under Section 5 of the Limitation Act) cannot be ignored. A valuable right would be lost to the petitioner in case he is not permitted to put his case before the First Appeal Court. Accordingly, the delay of 34 day is condoned.

Parties to appear before the District Judge (District-North) on 18.4.2016 who may decide the matter himself or assign the same to some other competent Court.

The money lying deposited in this Court will be kept in an interest bearing FDR by the Registrar General of this Court till further orders.

With these directions, petition disposed of.

Trial Court record be sent back.

**INDERMEET KAUR, J**

**MARCH 03, 2016**

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