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

+ C.R.P. 132/2016

PREM SINGH & ORS Petitioners
Through Mr.J.N.Pathak and Mr.Durga Dutt,
Advocates

versus

USHA RANI & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **24.08.2016**

CM No. 30804/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 132/2016 and CM No. 30803/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 18.05.2016. The petitioners were proceeded ex parte on 03.03.2016. On 07.04.2016 they appeared. The application under Order 9 Rule 7 CPC for setting aside the ex parte order was dismissed on 18.05.2016.
2. The trial court by order dated 18.05.2016 noted that though sufficient reasons have been given for non-appearance on 03.03.2016 yet no reason for non-filing of the application under Order 9 Rule 7 CPC from 07.04.2016 to 18.05.2016 is furnished in the present application. As all the petitioners/defendants were present on 17.04.2016, it is stated that the

petitioners failed to disclose any justifiable ground for not filing the application under Order 9 Rule 7 CPC within the limitation period from the date of the appearance. It also notes that a limitation period of 30 days is provided for moving an application under Order 9 Rule 7 CPC.

3. Though the respondents are not served, in my opinion, there is no need to serve the respondents as the impugned order proceeds on a wrong provision of law. There is no limitation period provided under the Limitation Act for moving an application under Order 9 Rule 7 CPC.

4. Reference may be had to the judgement of this court *M/s S R Foils and Tissues Ltd vs M/s Print and Digital India Pvt Ltd* in C.R.P. 118/2016 dated 09.08.2016. Reference may also be had to the judgment of this court in *DDA v. Shanti Devi & Anr., AIR 1982 (Del) 159*.

5. Reliance may also be placed on a judgement of the Madras High Court in the case of *Visalakshi vs Umapathy and Ors 2015 (5) CT C6*. Relevant paragraphs read as follows:

“27. The ratio applied by the learned Single Judge of this Court in Rajaji's case, has also been applied in C.L Cleetus vs. South Indian Bank Ltd. and another (MANU/KE/0485/2007 : AIR 2007 Kerala 301), wherein the Kerala High Court has observed that, "It is true that there is distinction between applications which are filed under Order 9 Rule 13 and those filed under Order 9 Rule 7, in that while the former seeks cancellation of decree finally disposing of suits, the latter seeks cancellation of only orders setting the applicant ex parte, thus preventing him from participating in further proceedings in the suit. It is also true that unlike the applications under Order 9 Rule 13 there is no article in the Limitation Act providing any specific period of limitation for applications under Order 9 Rule 7. Such applications will be governed by Article 137, the residuary article which prescribes a period of three years."

28. The decision in Pilla Reddy and others vs. Thimmaraya

Reddy and others (MANU/TN/0968/1996: (1997) 1 MLJ 37) stands on a different footing and therefore, it need not be discussed in this case.

29. In an unreported judgment decided on 15.2.2013 by the Delhi High Court in Vikas Dedeech vs. Richlook Garments (P) Ltd., the decisions in Palani Nathan vs. Devanai Ammal (MANU/TN/0330/1987 : 1989 (2) L.W.63), Kasturi and others vs. Saravanan @ Sakthi Saravanan (MANU/TN/1595/2010 : (2010) 7 MLJ 802), Rajaji vs. R. Krishnaji (MANU/TN/0745/2005 : 2006-1-L.W.790) and C.L Cleetus vs. South Indian Bank Ltd. and another (MANU/KE/0485/2007 : AIR 2007 Kerala 301) have been referred to.

30. After having gone through the catena of decisions, the learned Single Judge of the Delhi High Court has held that the contention of the learned counsel for the petitioner that the applications under Order IX Rule 7 C.P.C., are governed by Article 137 of the Limitation Act, requires no discussion in view of the legal position as laid down in the above referred decisions.”

6. The impugned order is accordingly quashed. The application of the petitioner is allowed.

JAYANT NATH, J

AUGUST 24, 2016

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