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

+ CM(M) 776/2016

KAMAL PRASHAD Petitioner
Through Mr.Mandeep Walia, Adv.with
petitioner in person

versus

THE DELHI DEVELOPMENT AUTHORITY & ORS.... Respondent
Through Mr.Hem Kumar, Adv.for Mr.Sanjeev
Sabharwal, Adv. for R-1/DDA
Mr.Mukesh Kumar, Adv. for R-2 & R-3

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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19.08.2016

CM No.29507/2016 (Exemption)

Exemption allowed, subject to all just exceptions.

CM No.29506/2016

For the reasons stated in the application the delay in filing the petition is condoned. Application is allowed.

CM(M) 776/2016 & CM Nos.29505/2016

1. By the present petition the petitioner seeks to impugn the order dated 30.4.2016 by which the review petition filed by the petitioner to review order dated 10.11.2015 was dismissed. Earlier the petitioner had filed an application under Order VII Rule 14 CPC read with Order XVIII Rule 17 CPC to permit the petitioner to place on record the Disability Certificate and also to lead additional evidence in this regard. The said application was

dismissed by the trial court on 10.11.2015. The trial court noted that the petitioners/plaintiff's evidence had been closed on 20.7.2011 and subsequently even the evidence of the defendant was closed. No justified reason for the delay in filing the application was given. Accordingly application was dismissed with costs.

2. The petitioner has filed the present suit seeking damages where it is alleged that on account of acts and misdeeds of the respondents and their alleged negligence the petitioner fell down into a 60 feet deep freshly dug-up sewer-hole and suffered injuries. Suit is filed for recovery of Rs.18 lacs as damages. What the petitioner now seeks to bring on record a 'disability certificate' dated 8.5.2014 issued by Bhagwan Mahavir Hospital which shows that the petitioner has suffered 30% permanent physical disability on left lower limb.

3. A perusal of the application shows that an averment is made that the said certificate was not originally available with the petitioner at the time of trial and has now been made available to the petitioner. Learned counsel has submitted that the petitioner was being treated by the said hospital also and that the certificate was made available by the hospital only recently on the said date despite rigorous follow up by the petitioner. He relied upon an earlier application filed under section 151 CPC where it has been stated that the petitioner has been treated at Babu Jagjivan Ram Hospital of the Govt. of NCT of Delhi and had many times visited the said hospital in order to request the doctors for constitution of a medical board for his medical examination for the purpose of issuing a 'disability certificate' but the same has not been done on account of the fact that petitioner is a poor/handicapped person. A direction was sought from the court to the said

hospital for constitution of a medical board. The application was filed on 6.5.2013. Copy of the order dated 6.5.2013 placed on record shows that notice was issued upon the application. Learned counsel for the petitioner submits that subsequently the application was dismissed as infructuous on 10.11.2015 in view of the fact that the petitioner on 8.5.2014 had been given a disability certificate by Bhagwan Mahavir Hospital.

4. The pendency of this earlier application filed by the petitioner is a clear pointer to the fact that the petitioner was having difficulty in procuring the certificate. His physical handicap would also be an impediment for him to follow up and get the medical certificate.

5. In my opinion, there are sufficient reasons to justify the delay in filing of the present application by the petitioner under Order VII Rule 14 CPC read with Order XVIII Rule 17 CPC. The impugned order dated 30.4.2016 and 10.11.2015 are accordingly set aside. The petitioner is permitted to place on record the original disability certificate dated 8.5.2014 issued by Bhagwan Mahavir Hospital. He is also permitted to summon one witness from the said hospital for the only purpose of tendering in evidence the medical certificate. The cross-examination would also be confined to the said medical certificate.

6. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

AUGUST 19, 2016

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