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

+ CM(M) 1036/2016

RAKESH NANDA

..... Petitioner

Through Mr.R.D.Itorora, Advocate.

versus

RENU GUPTA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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17.10.2016

CM No.38059/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) No.1036/2016 & CM No.38058/2016 (*stay*)

1. By the present petition, the petitioner seeks to impugn the order dated 06.06.2016 by which an appeal filed by the petitioner against the order dated 17.12.2015 in a pending eviction petition under Section 14(1)(a) of the Delhi Rent Control Act was dismissed.
2. Against the said order, the petitioner earlier filed a CM(M) No. 493/2016 impugning the said order before this court. The said petition was dismissed as withdrawn with liberty granted to the petitioner to approach the Rent Control Tribunal.
3. The Rent Control Tribunal dismissed the appeal of the petitioner as it

was not accompanied by an application seeking condonation of delay in filing of the appeal. The Tribunal noted that the time prescribed for preferring an appeal is 30 days and that the appeal is now filed in 2016 without an application for condonation of delay in filing of the appeal. The court held that it was for the appellant to satisfy the court that he was prosecuting the said action with due diligence and in good faith.

4. Learned counsel appearing for the petitioner relies upon the judgment of this court in the case of *Miss Nirmala Chaudhary vs. Bisheshar Lal, AIR 1979 Delhi 26* to contend that the power of the court to condone the delay is not circumscribed by an application being filed. The power to condone the delay can be exercised if the appellant satisfies the court that he has sufficient cause for not filing the appeal within the prescribed period and that power is not dependent on filing of a formal application. In view of the above judgment, he submits that the impugned order is erroneous.

5. In my opinion, keeping in view the above legal position, the Tribunal could have condoned the delay keeping in view the fact that the petitioner had approached this court after filing CM(M) 493/2016 which was a bona fide pursuit. However, if for some reason the Tribunal was not convinced about the sufficiency of fact on record to condone the delay, an opportunity ought to have been granted to the petitioner to file an appropriate application under Section 5 of the Limitation Act.

6. Advance copy of the petition has been sent by speed post to the respondent. None is present on her behalf.

7. In view of the above, the impugned order dated 06.06.2016 is quashed and the matter is remanded back to the Tribunal for fresh consideration. In the meantime, liberty is granted to the petitioner to file an appropriate

application for condonation of delay in filing of the appeal.

8. The petition stands disposed of.

JAYANT NATH, J

OCTOBER 17, 2016

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