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

+ CM(M) 936/2016

RAJIV SHARMA

..... Petitioner

Through

Mr.Chandrashekhar AC & Mr.Anshul
Rai, Advocates

versus

JAGDISH PRASAD SHARMA

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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20.09.2016

CM No.34462/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 936/2016, CM No. 34461/2016

1. By the present petition, the petitioner seeks to impugn the order dated 02.06.2016 by which his application under Order 9 Rule 4 CPC seeking restoration of the present suit was dismissed.
2. The suit was dismissed for non-prosecution of the case. The present application was filed by the petitioner on 21.04.2016, i.e. after almost 6 years.
3. As per the application, the petitioner claims to be diligently pursuing his suit since its inception in the year 2006. However, it is averred that the advocate who was appearing for the petitioner misguided the petitioner and did not inform the petitioner of the date of hearing. It is only in February,

2016 the petitioner realised that something is wrong and he contacted the new counsel. Thereafter, he came to know that the counsel did not attend the matter since 26.05.2009 and also did not inform the petitioner.

4. The trial court noted the above submission and also noted the averments made in the application filed under Section 5 of the Limitation Act that he is in a travelling job and usually remains out of station. The trial court concluded that the petitioner has not been diligently pursuing the case and has failed to show any sufficient cause for non-appearance and accordingly dismissed the application.

5. I do not see any reason to interfere with the impugned order. I may add that the petitioner has filed the present suit against his father seeking a decree of declaration to declare that he is owner of the property at Vijay Enclave, New Delhi. In the entire plaint there is no explanation given on the basis of which the petitioner claims to have become the owner of the said property. The only averment is that the defendant namely father sold the property to one Sh.Satish Gupta in 2003 and kept the entire sale proceeds with himself. Thereafter, it is averred that the petitioner purchased the said property back from the said Sh.Satish Gupta and hence is the absolute owner. In the sum and substance this is the basis for claiming title to the property. It is clear that the petitioner has filed the frivolous suit for harassing his father. That explains the lack of bona fide in pursuing the case.

6. The petition is without merit and is accordingly dismissed. All the pending applications are also dismissed.

JAYANT NATH, J.

SEPTEMBER 20, 2016/v