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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1128/2014 & C.M. No.21340/2014**

NAFEES JAMAL

..... Petitioner

Through Mr.Kulish Tanwar for Mr. Aly Mirza,
Advocate.

versus

MASOOD PRACHA & ORS

..... Respondents

Through Mr.M.Nafees Bukhari, Advocate for
R-1.

Mr.Ambuj Bhardwaj, Advocate for
R-2 to R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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18.02.2016

Order impugned before this Court is the order dated 13.10.2014 vide which the right of the appellant to be heard on merits was declined. His application seeking condonation of delay under Section 5 of the Limitation Act seeking condonation of 18 days in filing the appeal had been dismissed.

The order impugned before the Appellate Court was an order passed on an application filed by the plaintiff under Order XX Rule 10 CPC which had been passed in his favour. This order was sought to be impugned before the Appellate court and as noted supra it was dismissed without hearing the merits of the case on the ground that

the appeal was barred by delay of 18 days.

The averments contained in the application under Section 5 of the Limitation Act filed before the Appellate Court have been perused. There were two reasons which were given by the appellant. The appellant has stated that he is a 63 year old senior citizen and he had fallen ill after the date of the impugned order as such he could not contact his counsel in time. The second reason was that there was a death/bereavement in the family of the counsel as such the appeal could not be prepared in time. He states that he applied for certified copy of the impugned order dated 29.01.2013 on 12.02.2013 and the same had been furnished to him on 15.02.2013 but because of the aforementioned twin reasons the appeal could not be filed in time. The Appellate Court dismissing the appeal without hearing on merits has committed an illegality. The delay of 18 days in filing the appeal appears to be explained; there was no reason to doubt the averment made in the said application. The reasons appear to be bonafide. The finding returned by the Appellate Court that the impugned order passed on 29.01.2013 but the appellant had applied for certified copies only on 12.02.2013 was the one of the reason which had weighed in the mind of the Appellate Court to dismiss the application under Section 5 of the Limitation Act is clearly a perversity as it is not the mandate that certified copy of the impugned order has to be applied immediately on the passing of the same. It has to be applied within the stipulated period as prescribed by the Limitation Act. Admittedly, it was applied within that period. Impugned order is set aside subject to payment of Rs.5000/- as costs. Matter is remanded

back to the Appellate Court to hearing the appeal on merits.

Parties are directed to appear before the concerned Appellate Court on 10.3.2016.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 18, 2016
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