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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 781/2015**
GENESIS BURSON MARTSELLER

..... Petitioner

Through Mr. Abhinav Agnihotri and Ms.
Chaitanya Puri, Advs.

versus

AKSHAY CHAWLA & ANR

..... Respondents

Through Mr. R.P. Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **24.02.2016**

Order impugned before this Court is the order dated 26.11.2014 vide which the appeal filed by the plaintiff/petitioner against the order dated 23.11.2012 had been dismissed.

Record shows that a suit had been filed by the petitioner (Genesis Burson Martseller) seeking recovery of Rs.2,50,000/- along with interest against the two defendants; the first defendant was stated to have been imparted training by the petitioner and he and his father (defendant No. 2) had signed a bond that defendant No. 1 would serve in the company for the period of 2 years after the date of his training. The training by the petitioner which started on 12.05.2007 completed on 12.05.2009. Defendant No. 1 resigned from the company on 24.12.2009. His submission was that it was due to compelling circumstances that he could not complete the bond period of two years. His further submission is that his salary of Rs.44,000/- for two months

was also not paid.

The suit of the plaintiff which was at the stage of evidence stood dismissed for non-prosecution and in default on 09.04.2012. an application under Order 9 Rule 9 of the CPC was filed after a delay of 28 days seeking restoration of the suit. This application was dismissed by the order dated 23.11.2012. The Trial Court was of the view that there was no sufficient cause for condoning the delay of 28 days and no such delay having been explained in the aforementioned application, the first impugned order dated 23.11.2012 was passed. This was assailed by the petitioner/plaintiff by filing an appeal. The Appellate Court had endorsed this finding and rightly so. Before the Appeal Court, there was a delay of 121 days in filing the appeal. Along with this appeal, an application seeking condonation of delay of the aforementioned period was also filed. It was stated that it was an advertent delay of 121 days which delay was neither attributable and nor intentional. The explanation furnished qua this delay has been explained in paras 2 & 3 of the said application and which is reproduced herein as under:-

“2 That after passing of the Order, the counsel who had appeared for Applicant and had argued the Restoration Application under Order 9 Rule 9 of the CPC on behalf of the Applicant i.e. Mr. Puneet Yadav instructed the Court clerk to apply for a certified copy of the order. The Court clerk applied for the certified copy on 12.12.2012 and the same was made available by the registry on 17.12.2012. However, the Court clerk failed to bring this fact to the knowledge of the counsel or to any other lawyer of the firm. Thereafter, the counsel, in view of the ensuing court vacations, went on leave and joined back in January, 2013 and

thereafter resigned/left the firm with effect from February, 2013. While leaving the office the clerk also did not inform about the dismissal of the Restoration Application and issuance of the Order. It is only after the Applicant company enquired in the last week of March, 2013 regarding the status of the Civil Suit and the Restoration Application, the counsel for the Applicant enquired from the court clerk regarding the status of the suit and was apprised of the Order dated 23.11.2012. The Counsel for the Applicant immediately thereafter informed the Applicant company of the order dated 23.11.2012. Thereafter, the management of the applicant took a decision to file the present appeal and accordingly instructed the counsel for the Applicant in the first week of April to initiate the process of filing the said Appeal.

3 That thereafter, the draft of the appeal was forwarded by the counsel for the applicant to the Applicant and thereafter the Applicant provided their comments on the said draft. The said draft was thereafter finalized by the counsel for the Applicant and sent to the Applicant for signatures in the second week of April, 2013.”

The Trial Court had noted the factual matrix in its correct perspective. It had noted that these paragraphs had only narrated the conduct of the petitioner in prosecuting the case but no justifiable cause for making out the case for condoning the delay has even averred; in the absence of that, the Appellate Court had rightly concluded that there was no scope for condoning the delay and the appeal was accordingly dismissed. Necessary consequence was that the suit stood dismissed.

This Court also notes the nature of litigation which the petitioner wants to prosecute against the defendants. As per the defendants,

defendant No.1 had not been paid salary dues for two months; after the training imparted to him, he had served in the company for a period of 7 months. This Court is not going further into the merits of the controversy but the background of the case suggests that the impugned order calls for no interference. This Court also notes that this delay is at both stages i.e. at the first state when the application under Order 9 Rule 9 of the CPC was filed which was filed after the delay of 28 days; the appeal was also filed belatedly; there was a delay of 121 days in filing the appeal both of which reflect upon the callous conduct of the petitioner.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 24, 2016
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