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

+ CM(M) 23/2015 & C.M. No.495/2015

SHARADA INSTITUTE OF INDIAN MANAGEMENT  
RESEARCH

..... Petitioner

Through Mr.Peeyush Kalra, Advocate.

versus

M/S SYNSET GLOBAL TECHNOLOGIES PRIVATE LIMITED

..... Respondent

Through Mr.Om Prakash Shekhawat,  
Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

% **04.03.2016**

Petitioner is aggrieved by the order dated 13.11.2014 vide which the appeal filed by the petitioner against the order dated 12.4.2013 (vide which his application under Order IX Rule 13 of the CPC stood dismissed) along with his accompanying under Section 5 of the Limitation Act stood declined.

The Appeal Court was of the view that the hurdle of limitation has not been crossed by the petitioner and there being an unexplained and unjustifiable delay of 143 days in filing the appeal against the order dated 12.4.2013, the appeal did not deserve hearing on merits. The appeal was dismissed on the ground of limitation.

Learned counsel for the petitioner submits that a valuable right

of the petitioner would be lost in case he is not allowed to plead his case on merits. His further submission is that although his application under Order IV Rule 13 CPC stood dismissed on 12.4.2013, before the Appellate Court under the directions of the Appellate Court he had deposited the entire decretal amount along with interest and the said amount now stand deposited before the First Appeal Court. This submission of the learned counsel for the petitioner is a matter of record.

The averments contained in the application under Section 5 of Limitation Act have been perused. The reasons for seeking condonation of delay which as per the petitioner is 113 days (143 days minus 30 days i.e. the statutory period of limitation for filing an appeal) are contained in paras 2 to 7. The averments in these paragraphs disclose that the petitioner was in the hands of his counsel and he did not learn about the impugned order having been passed against him only up till August, 2013 whereupon a certified copy of the order was obtained on 30.9.2013; pursuant to which the appeal was filed which had led to this delay of 113 days in filing this appeal. Additional submission is that this delay is neither intentional nor deliberate.

Noting the above factual matrix as also the submission of the learned counsel for the petitioner that he should be granted a hearing on merits which this Court feels is a valuable right which should not be denied to the petitioner and the reasons seeking condonation of delay being by and large justifiable, this Court in its discretion sets aside the impugned order giving an opportunity to the petitioner to

plead his case on merits. The delay of 113 days in filing the appeal before the First Appeal Court is condoned. The First Appeal Court shall decide the appeal on merits. This order is passed subject to payment of Rs.10,000/-.

Petition disposed of.

**INDERMEET KAUR, J**

**MARCH 04, 2016**  
**ndn**