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

+ **FAO(OS) 362/2015**

KRISHAN KUMAR NANDA

..... Appellant

Represented by: Ms.Gurmeet K.Kapur, Adv.

versus

VINOD BEHL & ORS

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

21.01.2016

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CM 11932/2015

Exemption allowed subject to just exceptions.

CM 11933/2015 (delay)

For the reasons stated in the application 79 days delay in filing the appeal is condoned.

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1. We find that the impugned order is dated February 13, 2015 passed by the learned Single Judge.
2. The grievance of the appellant is that on the same date the suit was shown in the cause list, listed at serial number 3 before the learned Joint Registrar. Impleaded as defendant No.1, counsel for the appellant sat in the Court of the learned Joint Registrar and when the matter had reached it was noted, as recorded by the learned Joint Registrar in the order dated February 13, 2015, that the file has not been received.

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3. What had happened was that the suit was also listed on the same date before the learned Single Judge, who in the absence of representation from the side of the appellant passed the order dated February 13, 2015.

4. If this be so, the appellant ought to have first moved an application in the suit pointing out aforesaid facts and called upon the learned Single Judge to recall the order dated February 13, 2015 and decided IA 7991/2010 filed by the plaintiff on merits. The second grievance that the earlier limited concession given by the appellant was with respect to application filed by the appellant under Order XXXIX Rule 4 of Code of Civil Procedure and could not therefore be extended to grant the interim injunction pending disposal of the suit could also be brought to the notice of the learned Single Judge.

5. We find that till date notice has not been issued in the appeal.

6. For the reasons recorded hereinabove we decline to entertain the appeal and observe that if the appellant were to file an application before the learned Single Judge to recall the order dated February 13, 2015, pleading aforesaid facts, the same shall be decided by the learned Single Judge as per law.

7. No cost.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 21, 2016
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