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

+ **RSA 335/2015 and C.M. Appl. No. 19233/2015 (under Section 151 CPC, for stay) 19234/2015 (Under Order 41 Rule 27 CPC for production of additional evidence)**

BEENA KUMARI Appellant

Through: Mr. Sanjay Kr. Mishra, Advocate.

versus

RAJ KUMAR Respondent

Through: Ms. Shashi Jaiswal and Ms. Kritika Goswami, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **16.08.2016**

1. This Regular Second Appeal under Section 100 CPC has been filed by the defendant/appellant against the impugned judgment dated 16.3.2015 of the First Appellate Court decreeing the suit for recovery of money. The suit had been dismissed by the trial court vide its judgment dated 19.11.2012.

2. One of the grounds urged on behalf of the appellant before this Court is that against the judgment of the trial court dated 19.11.2012 the first appeal was filed after about one and half years on

16.4.2014, with an application for condonation of delay, however, the first appellate Court without first deciding and allowing the application for condonation of delay, has disposed of the appeal itself on merits.

3. I have gone through the record of the first appellate court and it is seen that the first appeal was filed on 16.4.2014 against the judgment of the trial court dated 19.11.2012, i.e. appeal has been admittedly filed beyond the period of 30 days of passing of the judgment dated 19.11.2012. Certified copy of the judgment filed before the first appellate court shows that time from 3.3.2014 to 7.3.2014 was taken for applying and obtaining the certified copy of the judgment of the trial court and therefore respondent/plaintiff at best was entitled to addition of 5 days in the limitation for filing of the appeal whereas the delay is approximately from 23.12.2012 till 16.4.2014.

4. In view of the obvious error committed by the first appellate court in deciding the first appeal on merits without first deciding the application for condonation of delay; and which must possibly be

because none of the counsels for the parties would have pointed out this fact to the first appellate court, but be that as it may, the impugned judgment of the first appellate court dated 16.3.2015 has to be set aside, inasmuch as, the first appeal cannot be decided on merits without first condoning the delay in filing of the first appeal.

5. In view of the above discussion the present appeal is allowed by setting aside the impugned judgment of the first appellate court dated 16.3.2015 being RCA No. 16/2014 and the same is remanded for decision to the first appellate court and the first appellate court before deciding the appeal on merits shall dispose of the application for condonation of delay which was filed by the respondent/plaintiff who had filed the first appeal in the first appellate court. If the first appellate court allows the application for condonation of delay, the first appellate court will thereafter dispose of the appeal on merits.

6. The amount deposited by the appellant in this Court will abide the judgment which will be passed by the first appellate court.

7. Parties to appear before the District and Sessions Judge (North-West), Rohini Courts, Delhi on 9th September, 2016 and the

District and Sessions Judge will decide the appeal itself or mark the same for disposal to a competent court in accordance with law.

8. This second appeal stands disposed of in the above terms.

VALMIKI J. MEHTA, J

AUGUST 16, 2016

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