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

+ **FAO(OS) 486/2015**

SURESH KUMAR

..... Appellant

Represented by: Mr.R.Khan, Adv.

versus

SRI BHAGWAN & ANR

..... Respondents

Represented by: Mr.Onkar Nath, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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26.02.2016

1. A suit filed in the year 1998 languished in the Record Room of this Court and regretfully due to inaction by the counsel.

2. Issues were settled on December 02, 2005. For 8 years plaintiff took time to lead evidence which was closed on October 05, 2013. The appellant, defendant No.1 in the suit, was directed to file affidavit by way of evidence of such witnesses which appellant wanted to examine. The same was required to be done on or before December 04, 2013. Time was repeatedly extended. Affidavit by way of evidence of witnesses was not filed. On March 15, 2014 the right to lead evidence was closed. IA 6809/2014 was filed by the appellant praying that order dated March 15, 2014 be recalled. On September 27, 2014 the order was recalled. Appellant was offered another opportunity to lead evidence but upon cost in sum of Rs.30,000/- to

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be deposited with the Prime Minister National Relief Fund. The deposit had to be within 3 weeks. Order dated September 27, 2014 was not complied. The date November 21, 2014 came. The learned Joint Registrar noted that the order dated September 27, 2014 had not been complied with in that, cost was not paid. Chamber appeal registered as OA 267/2015 was filed. The chamber appeal was filed belatedly. As per the Delhi High Court Original Side Rules and Orders, the order dated September 27, 2014 had to be challenged within 15 days. The appellant did not do so within the time granted.

3. The affidavit by way of evidence filed by the appellant only of himself was directed to be removed. The chamber appeal was thereafter filed challenging the twin order. The appeal was therefore composite. Reckon from November 21, 2014 the delay was of 240 days. The learned Single Judge has not condoned the delay, and rightly so. The appellant is showing supine negligence and complete indifference to the prosecution of the suit. Being a defendant it is apparent that the appellant desires to linger on the prosecution. The impugned order is a discretionary order. The discretion has been exercised by the learned Single Judge after noting all relevant facts. We concur with the view taken by learned Single Judge. The appeal is dismissed.

4. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

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