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

+ CM(M) 831/2015 & C.M. No.18592/2015

SAPNA SHARMA

..... Petitioner

Through

Mr. Samir Chugh and Mr. Anil Misra,
Advocates

versus

MAHAVIR SINGH LAMBA

..... Respondent

Through

Mr. Varun Nischal, Advocate

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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04.02.2016

Petitioner is aggrieved by the order dated 23.07.2015 vide which his application under Section 5 of the Limitation Act seeking condonation of delay of 33 days in filing his application under Order 9 Rule 13 of the CPC setting aside of the exparte decree dated 26.07.2010 had been dismissed.

Counsel for the non-applicant / respondent states that this order calls for no interference as there was no averment in the application under Section 5 of the Limitation Act to make out a justifiable cause for condonation of delay.

Para 2 of the said application has detailed the reason as to why the application was preferred after the delay. Submission in this application is that the defendant learnt about the exparte decree on 29.09.2014 at the time when the execution proceedings were going on. He applied for the certified copy which was made available to him on 18.11.2014 and the counsel was engaged by him on 25.11.2014.

This has led to 29 days delay in filing the present application. His submission is that he was never served before the Trial Court.

The Trial Court had dealt with the arguments now raised before this Court which is to the effect that the provisions of Section 27 of the General Clauses Act, 1897 was rightly applied to the service which has been effected upon the respondent. Section 27 of the General Clauses Act, 1897 is applied for the service effected through the registered AD post. Trial Court has wrongly noted the factual matrix as it was relied upon the service which was sent through UPC. Petitioner deserves to be heard on merits although the right of the respondent which has accrued to him in the way back on 26.07.2010 is valuable but at this stage, the Court is of the view that the respondent can be compensated with costs. Thus, while allowing the petition the matter is remanded back to the concerned Court to dispose of the application under Order 9 Rule 13 of the CPC in accordance with law. It shall be deemed to be an application which has been filed within the period of limitation. This order is passed subject to payment of Rs. 20,000/- as cost.

Petition allowed.

Parties are directed to appear before the Trial Court on 01.03.2016. Trial Court shall endeavour to expedite the hearing.

INDERMEET KAUR, J

FEBRUARY 04, 2016

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