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

+ **FAO(OS) 659/2015**

SURENDER KUMAR

..... Appellant

Represented by: Mr.Javed Ahmad, Advocate with
Mohd.Ovais, Advocate

versus

RITA VASHISHT & ANR

..... Respondents

Represented by: Mr.Rajesh Gupta, Advocate with
Mr.Harpreet Singh, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **15.02.2016**

1. Challenge in the appeal is to the order dated October 14, 2015 dismissing IA No.16721/2015 filed by the appellant – the plaintiff in the suit.
2. Invoking Order 9 Rule 9 of the Code of Civil Procedure the plaintiff sought setting aside of the order dated May 21, 2015 by which order the suit filed by the appellant was dismissed in default.
3. The learned Single Judge has found lack of bona-fide for non-appearance on May 21, 2015; recording a submission made by learned counsel for the defendants to the effect that on March 19, 2015 the Bench concerned had expressed an opinion concerning appellant's suit being hopelessly barred by limitation, but because of the relationship between

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litigating parties had desired negotiated settlement and therefore the counsel deliberately stayed away on May 21, 2015, when the suit was dismissed in default.

4. Having heard learned counsel for the parties and perused the record of the suit we fail to understand as to how come the learned Single Judge returned the finding that the learned Single Judge seized with the suit on March 19, 2015 prima-facie formed an opinion that the suit was barred by limitation and this motivated the plaintiff to not appear before the learned Single Judge on May 21, 2015.

5. The record of the suit which has been attached with the appeal shows that the suit was listed for admission before the learned Single Judge on December 18, 2014 when summons were directed to be served upon the defendants returnable on March 19, 2015.

6. Service being effected upon the defendants the learned Single Judge simply recorded on March 19, 2015 that written statement may not be filed however parties would appear in person on the next date for a settlement to be worked out.

7. On May 21, 2015 there was no appearance on behalf of the plaintiff resulting in the suit being dismissed in default.

8. Thereafter the Court went into summer recess and opened in July IA No.16721/2015 was filed under Order 9 Rule 9 of the Code of Civil Procedure by the plaintiff.

9. Having perused the averments made in IA No.16721/2015 we find that the sufficient cause projected for non-appearance is that plaintiff's counsel was out of station and had instructed a colleague to attend hearing

on May 21, 2015. Said counsel forgot to appear in Court.

10. We dispose of the appeal accepting the cause shown as a sufficient cause. Order dated October 14, 2015 is set aside. IA No.16721/2015 is allowed. Order dated May 21, 2015 dismissing the suit is set aside.

11. CS (OS) No.3913/2014 is restored for adjudication on merits.

12. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 15, 2016

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