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

+ LPA 4/2016

ANURADHA KALRA

..... Appellant

Represented by: Mr.Arun Kumar Varma,
Mr.Arun Malik,
Mr.H.B.Pandey, Advs.

versus

THE DELHI DEVELOPMENT AUTHORITY Respondent

Represented by: Mr.Dhanesh Relan, Standing
Counsel DDA.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

05.01.2016

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CM 195/2016

Exemption allowed subject to just exceptions.

CM 194/2016

For the reasons stated in the application 146 days delay in filing the appeal is condoned.

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1. Learned counsel appears for DDA as noted above since advance copy of the appeal was served upon DDA as per rules of this Court.
2. Heard learned counsel for the parties. Inter-alia one grievance of the appellant is that the learned Single Judge has not decided the issue with respect to a conversion policy notified by the Ministry of Urban Development which was adopted by the respondent.

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3. With respect to the submission, learned counsel for the appellant concedes that in the writ petition foundation of the cause of action with reference to the conversion policy was not laid. However, counsel points out that in the rejoinder filed to the counter affidavit, the conversion policy was relied upon. Learned counsel for the appellant further submits that during arguments conversion policy was relied upon. To make good the point, learned counsel draws attention to the written submissions filed before the learned Single Judge.

4. We find that in the impugned judgment the learned Single Judge has not decided the issue with reference to the DDA's conversion policy. Rather than remand the matter for adjudication afresh by the learned Single Judge with reference to the conversion policy, since foundation of the cause of action in the writ petition was not founding on the conversion policy we have put it to learned counsel for the appellant whether the appellant would be agreeable to the appeal being disposed of after setting aside the impugned order and simultaneously permitting the appellant to withdraw the writ petition with liberty to revisit the Court by filing a fresh petition with respect to the grievance but with reference to the conversion policy.

5. Learned counsel for the appellant states that the appellant would be agreeable to this course of action.

6. In law, the foundation of a cause of action has to be in the writ petition. Pleadings in the rejoinder have to be limited to dealing with the case set up by the opposite party. A different cause of action, not pleaded in the writ petition, cannot be laid in the rejoinder.

7. Since the appellant took the point in the rejoinder and since the learned Single Judge has not dealt with it interest of justice requires the appeal to be disposed of setting aside the impugned order and simultaneously dismissing the writ petition filed by the appellant as withdrawn with liberty granted to file a fresh petition concerning the grievance of the appellant pleading a case under the conversion policy.

8. Ordered accordingly.

9. The appeal is disposed of setting aside the impugned order dated June 29, 2015. W.P.(C) No.5072/2013 filed by the appellant is dismissed as withdrawn with liberty granted to file a fresh petition in terms of what has been noted hereinabove.

10. No cost.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 05, 2016

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