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

+ C.R.P. 44/2012

SURENDER KUMAR Petitioner
Through Mr.J.S. Vohra, Advocate.
versus
UNION OF INDIA & ANR Respondents
Through Mr. Jaswinder Singh, Advocate for
UOI.
Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti
Tyagi, Advocate for R-2 & 3.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **27.02.2017**

1. By the present revision petition filed under Section 115 CPC, the petitioner seeks to challenge the order dated 17.02.2012 by which the court had allowed an application under Order 9 Rule 13 CPC filed by the respondents and set aside the ex parte judgment/decreed.
2. The petitioner/predecessor had filed a suit for declaration and mandatory injunction in respect of the property bearing No. 3386-87, Chowk Singhara, Qutab Road, Delhi. The said suit was decreed in favour of the petitioner on 17.02.2007. It is the case of respondent No.2 that the execution was filed by the petitioner only in 2010. It is thereafter pursuant to order dated 22.07.2011, a status report was filed. It is only then, on examination of the file it came to the knowledge of respondent No.2 that no Government counsel was engaged in the suit and no written statement was filed.

3. The trial court by the impugned order noted that though the respondent was served but the concerned officer namely, the Kanoongo was appearing but never informed the concerned Department. The status report also showed that one Sh. Rajinder Singh son of Sh. Shiv Charan had filed a suit against the petitioner regarding right of roof of this property in which possession of the present premises was shown to be of the said Sh. Rajinder. The trial court also concluded that this fact had been suppressed by the petitioner. Hence, in the interest of justice, the trial court noted that it would be appropriate that the ex parte decree be set aside subject to costs and the parties are heard on merits.

4. I have heard the learned counsel for the parties.

5. Learned counsel for the petitioner has submitted relying upon the judgment of the Supreme Court in the case of ***P.K.Ramachandran vs. State of Kerala, 1997 (4) RCR 7*** that law of limitation may harshly affect a particular part but it has to be applied with all its rigour when the statute so prescribes. He also submits that the delay in filing of the application under Order 9 Rule 13 CPC was condoned even though no application under Section 5 of the Limitation Act had been filed. He submits that no plausible explanation has been given to condone the delay. The application is also not signed by the defendant.

6. Learned counsel appearing for the respondents has relied upon the judgment of this court in the case of ***Nand Singh vs. Estate Officer & Anr., AIR 1993 Delhi 38*** to contend that based on oral submissions made by the respondents sufficient cause for condonation of delay can be shown which has been shown in the present case.

7. As far as the availability of sufficient cause is concerned, a perusal of

the application filed by respondent No.2 under Order 9 Rule 13 CPC would show that it has been stated therein that they have learnt about filing of the suit only after receipt of notice of the execution court. It is also stated that there was no negligence as the Kanoongo used to appear in the matter but no information or intimation was sent to the Department about the pendency of the present case by the said Kanoongo. Accordingly, no counsel was appointed in the present case. These are the two grounds stated as to why there was sufficient cause for setting aside the ex parte decree. The trial court noted the two submissions and also noted about the fact that in the status report there is reference to a suit filed by one Sh.Rajinder claiming possession of the suit property and concluded that there was sufficient cause for setting aside the ex parte decree despite the delay in having moved the application.

8. It is settled law that the term sufficient cause as per Section 5 of the Limitation Act has to be liberally construed in order to promote the cause of substantial justice. In the present case, the trial court has found the grounds stated by the respondent to construe “sufficient cause” for condonation of delay under Section 5 of the Limitation Act. In my opinion, there are no reasons for this court in exercise of its revisional powers to interfere in the impugned order. There is no merit in the present petition and the same is dismissed.

9. Pending applications, if any, also stand dismissed.

JAYANT NATH, J

FEBRUARY 27, 2017

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