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

+ CM(M) 1376/2016 & CM Nos.47820-22/2016

MAHESH KUMAR JAIN & ANR Petitioners

Through Mr.Jaikant Prasad, Advocate

versus

SANTOSH GARG & ANR Respondents

Through Mr.Praveen Kr.Singh, Mr.H.S.Hans
& Mr.V.P.Garg, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **17.01.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 22.03.2016 by which an application under Section 5 of the Limitation Act filed by the petitioners was dismissed with a cost of Rs.25,000/-.
2. The respondents had filed a suit for permanent and mandatory injunction. The trial court on 10.12.2015 disposed of the application filed by the respondents under Order 39 Rules 1 and 2 CPC passing certain directions. The petitioners filed an appeal against the said order dated 10.12.2015 on 23.01.2016. It is stated that there is a five days delay in filing of the appeal. Alongwith the appeal, an application under Section 5 of the Limitation Act was also filed.
3. The appellate court noted the submissions of the petitioners in the application that he could not apply for certified copy of the order on account

of winter vacation and the same could be applied on 04.01.2016 after reopening of the court. Copy of the order was made available on 13.01.2016 whereafter the petitioner contacted his counsel and appeal could be filed. The appellate court concluded that there is no cogent reason given as to why the petitioners could not apply for certified copy of the order prior to winter vacation. Further, it noted that after certified copy was handed over to the petitioners on 12.01.2016, the petitioners still had six days to file the appeal but it was not done. Hence, the appeal was dismissed.

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

5. In my opinion, the petitioners have given reasons for delay in filing of the appeal. They have stated that the order being passed on 10.12.2015. The court was shut for winter vacation on 24.12.2015. After reopening of the court, the petitioners applied for certified copy on 04.01.2016 which was made available to them on 12.01.2016. Thereafter, they contacted their counsel and the appeal has been filed on 23.01.2016.

6. In my opinion, sufficient cause was shown for eight days delay in filing of the appeal. The impugned order suffers from material irregularities as it concludes that sufficient cause has not been shown in the application. The order is set aside. The present petition is allowed, subject to payment of cost of Rs.5,000/-. All the pending applications are also allowed.

7. Parties may appear before the concerned appellate court on 02.02.2017.

JAYANT NATH, J.

JANUARY 17, 2017/v