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

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Date of Decision: 02nd August, 2017

+ RFA 495/2016

ANUJ KUMAR SINGH

..... Appellant

Through: Mr. Ashok Kumar Singh, Adv.

versus

YOGENDRA PRASAD SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the judgment dated 11th April, 2016 whereby the learned Trial Court has declined to condone the delay of six days in filing the application for leave to defend and has passed the decree against the appellant under Order XXXVII Rule 3(6) of CPC.
2. There is no appearance on behalf of the respondent despite the matter having been passed over twice. It is 3:00 p.m.
3. The respondent instituted a suit for recovery of Rs.8,10,000/- against the appellant in which the notice was issued to the appellant. The appellant received the summons on 8th July, 2014 and entered appearance under Order XXXVII Rule 3 of CPC on 14th July, 2014. On 30th August, 2014, the appellant received the summons for judgment in pursuance to which he filed an application for leave to defend on 16th September, 2014. The appellant

also filed an application for condonation of delay of six days in filing the application on the ground that the appellant was not able to read and understand English Language and, therefore, could not understand the technicality for filing of leave to defend application within 10 days. The appellant claimed to be under the impression that the matter was listed before the Trial Court on 18th September, 2014 and, therefore, the appellant handed over the summons to his counsel after 11 days of receiving it.

4. Learned counsel for the appellant urged at the time of the hearing that the explanation given by the appellant constitutes sufficient cause for the delay. Reliance is placed on *N. Balakrishnan v. M Krishnamurthy*, (1998) 7 SCC 123 and *HDFC v. Anil Laul*, 85 (2000) DLT 373. In *HDFC v. Anil Laul*, similar ground for condonation of delay was raised which was accepted by this Court as sufficient cause for delay.

5. This Court is satisfied that the appellant has shown sufficient cause for delay of six days in filing the application for leave to defend.

6. The appeal is allowed and the impugned judgment and decree dated 11th April, 2016 are set aside. The delay of six days in filing the application for leave to defend by the appellant is condoned subject to cost of Rs. 5,000/- to be paid by the appellant to the respondent.

7. List the appellant's application for leave to defend before the Trial Court on 28th August, 2017.

8. The record of the Trial Court be returned back forthwith.

9. Copy of this judgment be sent to the respondent.

10. Copy of this judgment be given *dasti* to counsel for the appellant under the signature of the court master.

AUGUST 02, 2017
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J.R. MIDHA, J.

