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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 467/2015, CM No. 15663/2015 & CM No. 15664/2015**
VINOD KHATRI & ORS Appellants
Through: Mr. Vikram Nandrajog, Advocate along
with Mr. Abhimanyu Singh Khatri,
Advocate.

versus
PRADEEP KUMAR & ORS Respondents
Through: Mr. Anand Yadav, Advocate along with
Ms. Anita Tomar, Advocate for
respondent No. 1.
Mr. Gaurang Bindra, Advocate for
respondent No. 4.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
30.08.2017

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1. The appellants (interveners) in CS(OS) No. 2191/2013 have filed the present appeal being aggrieved by the order dated 15.05.2015 passed by the Single Judge dismissing with costs their application under Order 1 Rule 10 CPC seeking impleadment. Accompanying the present appeal, is an application for seeking condonation of delay of 53 days for filing the appeal.
 2. Learned counsel for the respondents opposes the present application on the grounds; firstly, the delay is not of 53 days as alleged but of 75 days and secondly, that the appellants have approached the Court with unclean hands intentionally concealing in their application for condonation of delay, the fact that on the date they filed the present appeal, they had already instituted a civil suit for permanent and mandatory injunction against respondent No. 1 in the High Court in CS(OS) No. 2037/2015 which was subsequently transferred to the District Court.
 3. We have perused the averments made in CM No. 15664/2015 filed by the appellant for condonation of delay which bears out the submission made out by the
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learned counsel for the respondent No.1. Except for stating in para 3 of the application that after passing of the impugned orders, the appellants were advised to pursue independent litigation in view of the cause of action having arisen in their favour, there is not a whisper in the application or in the main appeal to the effect that the appellants had already filed a civil suit against the respondent No. 1, which is pending adjudication. It is also not denied that the counsels appearing in the civil suit are the very same counsels who have filed the present appeal.

4. Mr. Nandrajog, learned counsel appearing for the appellants tenders an unqualified apology on behalf of his colleagues for not being candid enough to state the correct facts in the present application and for withholding material facts.

5. While cautioning the counsels for the appellants to be more careful in future, we are refraining from passing any adverse orders against the appellant and their counsels. At the request of Mr. Nandrajog, who states that appellants do not wish to press the present appeal, having instituted an independent suit and instead, they propose to approach the District Court for seeking clubbing of their suit along with the suit filed by respondent No. 1, the appeal is disposed of as not pressed, along with the pending application.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 30, 2017/ss