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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 912/2015 & C.Ms 21771/2015 & 27781/16
RAJESH KUMAR AGGARWAL Appellant
Through: Mr. Mitthan Lal, Advocate

versus

SUNIL & ORS. Respondents
Through: Mr. S.K.Mishra, Advocate with
respondent No.3-in-person

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
13.02.2017

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One of the orders impugned in this petition is of 21st May, 2014 vide which petitioner's application under Order 9 Rule 13 CPC has been dismissed being bereft of merits and with cost of ₹1,000/-.

During the pendency of this petition, petitioner was directed to deposit the awarded amount although stand taken by him was that he was not the registered owner of the vehicle in question and is not liable to satisfy the Award, which has been passed jointly and severely against driver-owner as well as petitioner herein. Although interim orders were passed in this petition, but were not continued and as per petitioner's own showing, out of the awarded amount deposited by appellant, a sum of Rs.3,03,250/- has been already released to respondents-claimants.

Vide last order, execution file was summoned and its perusal reveals that execution stands satisfied. The relief sought in this petition is for stay of the orders passed in the execution proceedings. Thus, it

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becomes evident that this petition has become infructuous. However, petitioner cannot be left without a remedy, as he was *ex parte* before the learned Tribunal and his application seeking setting aside of *ex parte* proceedings has been dismissed vide impugned order of 21st May, 2014. As per Order 43 Rule 1 CPC, order dismissing application under Order 9 Rule 13 CPC, is appealable.

Learned counsel for petitioner submits that due to inadvertence, an appeal was not filed against order of 21st May, 2014 and petitioner be now permitted to appeal against it while waiving the objection of limitation.

Upon hearing and in the peculiar facts and circumstances of this case, this petition and the application are disposed of as infructuous with liberty to petitioner to file an appeal against order of 21st May, 2014 along with application for condonation of delay within four weeks. Needless to say, if it is not so done, then an application for condonation of delay would be considered while taking into consideration the period spent in pursuing the remedy before a wrong forum. In the event of petitioner succeeding in the appeal against order of 21st May, 2014, it would be open to petitioner to seek the recovery of the amount deposited by him in pursuance to the orders passed in this petition.

With aforesaid directions, this petition and the application are disposed of while not commenting upon merits, lest it may prejudice either side in appeal proposed to be filed.


(SUNIL GAUR)
JUDGE

FEBRUARY 13, 2017

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