

\$~17

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

DECIDED ON : 29th NOVEMBER, 2017

+ **RSA 272/2017**

MANOJ BIDHURI Appellant

Through : Mr.Rajveer Singh, Advocate
with Mr.Raj Bidhuri, Advcoate.
versus

SHARUN NISHA Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

CM No.43419/2017 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

RSA 272/2017 & CM No.43418/2017

1. The present regular second appeal under Section 100 of Code of Civil Procedure (hereinafter referred to as 'CPC') read with Section 42 of CPC has been preferred to challenge the legality and correctness of an order dated 27.09.2017 of learned Addl. District Judge in RCA No.19/2017 whereby the order dated 04.01.2017 of learned JSCC-ASCJ-GJ (hereinafter referred to as 'Trial Court') in Suit No.163/2016 was confirmed.

2. I have heard the learned counsel for the appellant and have examined the file. On perusal of the file, it reveals that the respondent filed the suit for recovery under Order XXXVII CPC. There was delay of ten days in filing leave to defend application. The appellant was not able to show sufficient cause for delay in filing the application for leave to defend. Consequently, by an order dated 04.01.2017 learned Trial Court declined to condone the delay and decreed the suit. RCA No.19/2017 to challenge the said order did not yield any result.

3. Undisputedly, the appellant was duly served on 24.11.2016. It is also not in dispute that application under consideration was filed on 14.12.2016 i.e. beyond the statutory period of ten days. In the application, the appellant attempted to disclose that the delay was due to the reason that the appellant had gone to Mussoorie for an urgent work and the counsel was not available due to marriage of his close colleague of chamber. The appellant was, however, unable to give any plausible explanation and did not place on record any document whatsoever to infer his visit to Mussoorie for any urgency. He also did not place on record any document to show if marriage of the specific colleague of his counsel were going to take place, and if so, on what date. The Trial Court not only considered the delay in filing the leave to defend application insufficient; also took into consideration the merits of the case whereby the cheque in question contained the appellant's signatures and on presentation, it was dishonoured.

4. Since the Courts below have returned concurrent findings whereby the appellant was unable to give sufficient cause for delay in filing the application for leave to defend, this Court finds no valid reasons to disturb it. Apparently, no ‘question of law’ is involved in the present appeal.

5. The appeal is unmerited and is dismissed. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

NOVEMBER 29, 2017 / tr