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

% *Date of Order: 30.10.2018*

+ **CM(M) 363/2018**

VIPIN BHARDWAJ Petitioner
Through: Mr. Zahid Ali, Advocate.

versus

ASHOK BHALLA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

CM APPL 12626/2018 (for Exemption)

1. Allowed, subject to all just exceptions.

CM APPL 12628/2018 (for condonation of delay)

2. For the reasons stated in the application the delay of 13 days in re-filing the petition is condoned. The application is disposed of.

CM(M) 363/2018 & CM No. 12627/2018 (for stay)

3. The order dated 20.12.2017 passed by the Court of learned Additional District Judge, West District, Tis Hazari Courts, Delhi ('ADJ'), dismissing the appeal of the petitioner/appellant/defendant against the order dated 13.10.2016 in MCA No. 45216/2016 declining his application under Order IX Rule 13 of the Code of Civil

Procedure, 1908 ('CPC'), is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

4. The Respondent/plaintiff filed a suit for recovery of Rs.2,11,533/- on 16.04.2007 against the petitioner before the learned 'ADJ'. After filing the written statement, the issues were framed by the learned Civil Judge on 07.07.2010. The petitioner stopped appearing thereafter and he was proceeded ex-parte on 18.04.2013. The suit of the respondent for recovery of Rs.2,09,333/- with interest @ 8% P.A was decreed ex-parte in his favour and against the petitioner on 06.08.2013.

5. The petitioner filed an application under Order IX Rule 13 read with Section 151 CPC on 15.04.2015 for setting aside the ex-parte judgment and decree dated 06.08.2013.

6. The learned counsel for the petitioner contends that the petitioner is one of the Directors of M/s Logistics Linkage (India) Pvt. Ltd. and the said company through its Attorney filed a suit for recovery of Rs.4,60,000/-, bearing No.90/2008, against the son of the respondent. He urges that the matter was amicably resolved between the parties orally and it was agreed that neither party shall pursue the respective suits. He submits that under impression of settlement, the petitioner stopped appearing in the present case. He also contends that the suit filed by his company was dismissed in default on 10.09.2008. Restoration application filed on 02.02.2009 was also dismissed in

default on 16.11.2010. The second application for restoration was dismissed in default on 01.09.2011. Third application for restoration was dismissed on 10.01.2013 when neither party appeared due to an oral settlement. He further submits that the petitioner came to know only on 05.04.2015 from the son of the respondent that ex-parte judgment & decree has been passed against him, upon which he immediately filed an application for setting aside the ex-parte judgment and decree dated 15.04.2015.

7. While dismissing the application under Order IX Rule 13 CPC, the learned ADJ has given his findings:-

“In the present suit for recovery of a sum of Rs. 2,11,533/-, defendant was proceeded ex-parte by my Ld. Predecessor vide order dated 18.04.2013 and thereafter after recording ex-parte evidence an ex-parte judgment was pronounced against the defendant on 06.08.2013 in which defendant was ordered to pay the above sum alongwith interest @ 8%. Plea of Ld counsel for the defendant that there was oral agreement between the party not to pursue the cases filed against each other does not inspire any confidence. When there are cross cases pending between the parties, an ordinary prudent person would not orally settle with the other without the same be reduced into writing and in case it is orally settled he would definitely ensure that the same is withdrawn. It is unbelievable that a person stops appearing in a case without even bothering to know about the fate of the case. He was only required to make a single phone call to

his counsel to know the status of the present suit. Defendant cannot put appearance in a case as per his own convenience and timing. The present suit was filed by the plaintiff in the year 2007 and after six years it was decreed in the year 2013. When the time to enjoy the benefits of the same defendant cannot create obstacles by raising the pleas which do not inspire any confidence”.

8. If there was a settlement, it was expected from both the parties to get the settlement reduced to writing and place it on record of both the cases by moving necessary application under Order XXIII ‘CPC’. The suit filed by M/s. Logistic Linkage (India) Pvt. Ltd. is not the personal matter of the petitioner and it was not against the respondent but against his son.

9. Even today, learned counsel for the petitioner has failed to pinpoint even the date of the alleged oral settlement. The Petitioner has also not mentioned as to when he informed his counsel about the settlement which had allegedly taken place between the parties. Name of his lawyer is also not indicated. The petitioner did not take any action against his lawyer for his negligence. While disposing of RFA No.497/2017 in **Moddus Media Pvt. Ltd. vs. M/s. Scone Exhibition Pvt. Ltd., 2017 SCC OnLine Del 8491**, I have held that “*The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the*

blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences.” The Apex Court in the case of **Hameed Joharan v. Abdul Salam, (2001) 7 SCC 573**, held that “.....It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant

since delay defeats equity - the Latin maxim vigilantibus et non dormientibus jura subveniunt (the law assists those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of rights..... ””

10. Even otherwise, the limitation to file application to set aside ex-parte judgment and decree under Article 123 of the Limitation Act, 1963 is 30 days from the date of decree. No application for condonation of delay was filed before the Trial Court along with the application under Order IX Rule 13 CPC.

11. Having viewed this petition from all possible angles, this court does not find any merit in this petition. The petition and application, being CM No. 12627/2018, are dismissed accordingly with no orders as to costs.

VINOD GOEL, J.

OCTOBER 30, 2018

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