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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 109/2018 & C.M.Nos.11527-29/2018

KHAZAN SINGH

..... Appellant

Through: Mr. Ritesh Khatri, Advocate.

Versus

RAKESH & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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09.04.2018

This appeal impugns an order dated 17.05.2018 which allowed the respondents application for restoration of the suit. The respondents had filed a suit for specific performance of a contract, however, it was dismissed in default and for non-prosecution on 09.05.2015. In addition to the application for restoration, an application under section 5 of the Limitation Act, 1963 seeking condonation of delay of eight days in filing the restoration application was filed on 16.05.2015. The application was allowed in view of decisions in *Prayag Up Nivesan Avas Avam Nirman Sahkari Samiti vs. Facquir Chandra Mehrotra 2001(1) Civil Court Cases 452 (Allahabad)* and *Lalit Kumar Bhargava (now deceased) vs. Devender Kumar Bhargava 83 (2000) Delhi Law Times 567*, which held that for mistake of counsel, parties may not be left to suffer precipitately especially when *malafide* of the defaulting party is not discerned. The plaintiff had also relied upon *Sital Prasad Saxena (D) by Lrs vs. Union of India & Ors., 1985(1) SCC 163* which held that

cause of justice should be advanced, and procedure is meant only to facilitate the administration of justice and not to defeat it. In view of the above, the application was allowed subject to costs of Rs.20,000/-, of which Rs. 15,000/- was to be paid to the defendants through their counsel and Rs.5,000/- was to be deposited with the Delhi Legal Services Authority.

The appellant contends that there was no reason to allow the application; the pages of diary of the counsel show that they are from two different diaries and many of these pages record no engagements; that the counsel's diary page of 9th February is not available. This Court finds the said argument untenable because at page 49 of the paper book, a photocopy of a diary page of 9th February is annexed which was taken into consideration for condoning the delay. The Trial Court was of the view that the interest of justice requires that the suit be decided on merits. This Court agrees with the same.

There is no occasion to interfere with the impugned order. The appeal is without merits. It alongwith pending applications is dismissed.

NAJMI WAZIRI, J.

APRIL 09, 2018

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