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

+ **FAO 121/2018, CM APPL. 8001/2018**

ERA INFRA ENGINEERING LTD Appellant

Through: Mr. Achin Goel, Advocate.

Versus

RAJIV MALIK Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **24.04.2018**

This appeal impugns an order dated 18.11.2017 passed by the learned Additional District Judge dismissing the appellant's application for restoration of the suit, which was dismissed in default on 10.03.2016. The reason mentioned is that during the pendency of the suit, the counsel passed away in December, 2016; the said counsel used to operate his office both from Chandigarh and Delhi; the appellants came to know about his demise from one of his associates sometime in August, 2017. However, the application is silent as to how, from whom and when they did they get to know this information. The appellant is a corporate entity and is not to be treated as an illiterate who would not understand the effect of non-appearance in their own case. For almost 19 months, they could not pursue their case which resulted in the dismissal of the suit in default on 10.03.2016. The application does not mention anything about any kind of communication with their lawyer from the date of the dismissal till the date

of filing of the application. The learned counsel for the appellant submits that their earlier counsel before the learned Additional District Judge had to be changed. Be that as it may, the knowledge of earlier lawyer having passed away does not by itself justify the delay in filing the application.

The impugned order records *inter alia*:-

“By Virtue of this Order, application under Order IX Rule 3,4,10 alongwith Section 5 of Limitation Act application is being disposed of. In a nutshell, the suit in question was dismissed for non-prosecution on 10.03.2016. The present application for restoration of the suit has been moved on 11.10.2017. An application u/S. 5 Limitation Act praying that delay in moving the application for restoration may be condoned, has been considered. There is a time gap of one year and seven months in moving the application seeking restoration of the suit. It is stated in para 2 that on meeting with the present counsel and upon receiving the legal opinion, the plaintiff made up his mind to file the present application seeking restoration and therefore delay may be condoned.

On perusal of application, I am not satisfied that there are bonafide and sufficient reasons in the application as to why the plaintiff took as long as 19 months to file the present application. Not a whisper has been uttered as to why plaintiff did not bother to inquire about his case or take legal advise for further proceedings in the matter prior to 13.09.2017. Needless to say the plaintiff has been sitting over the application callously and negligently for a period of 19 months. There are no merits in the application under Section 5 of Limitation Act. Resultantly, the application under Section 5 of Limitation Act is dismissed. As a result, the application under Order IX Rule 3,4 and 10 CPC cannot be looked into”.

The learned counsel for the appellant submits that there was no reason as to why the appellant could not pursue its case. The Court cannot comment on the same.

In view of the above, the Court finds no reason to interfere with the impugned order. The appeal is without any merit and is accordingly dismissed.

NAJMI WAZIRI, J.

APRIL 24, 2018

RW