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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 320/2018**

JAY KUMAR Appellant
Through: Mr. DK Devesh, Adv.

versus

SANDEEP VIRMANI & ANR Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **16.07.2018**
CM APPL. 27542/2018(Exemption)

This is an application filed on behalf of the petitioner seeking exemption from filing of certified copies of annexures. Exemption allowed, subject to just exceptions.

CM APPL. 27543/2018(Exemption)

This is an application filed on behalf of the petitioner seeking exemption from filing complete Trial Court Record. Exemption allowed, subject to just exceptions.

FAO 320/2018 & CM APPL. 27541/2018

Vide the present petition, the appellant assails the impugned order dated 28.04.2018 of the ADJ-05, PHC, New Delhi in CS No.483/17 vide which an application under Order IX Rule 13 of the CPC and Section 5 of the Limitation Act, 1963 filed by the defendant i.e. the appellant herein seeking setting aside of the ex-parte judgment

and decree dated 25.08.2014 was declined. The submissions that have been made on behalf of the appellant in the impugned order state categorically that the contention of the appellant is to the effect that in view of the demise of the counsel of the appellant, the appellant could not gain knowledge of the ex-parte proceedings that were initiated against the appellant herein.

Vide the impugned order it has been observed to the effect vide para-4 thereof that the contention that was raised on behalf of the plaintiff i.e. the decree holder was to the effect that the defendant/judgment debtor came to be aware of the judgment and decree in the suit on the date 04.02.2015 but the application under Order IX Rule 13 of the CPC was moved only on 06.09.2016 through which no sufficient cause was brought forth and an observation was also made vide the impugned order to the effect that there was a delay of nine months for which there was no cogent reason given. It has been sought to be submitted on behalf of the present appellant that the notice of the application for execution bearing no.428/15 was issued vide order dated 01.11.2015 and thus the date of service being 04.02.2015 as submitted on behalf of the decree holder was apparently erroneous and it has been submitted on behalf of the appellant that the appellant was served on 26.11.2015. It is essential to observe that this submission of the appellant that the appellant was served on 26.11.2015 is categorically borne out through observations in para-5 of the impugned order as well with it having been observed in relation to the callous conduct of the judgment

debtor i.e. the present appellant despite knowledge of the decree in November, 2015 and having taken time till September, 2016 for institution of the application seeking setting aside of the impugned judgment and decree dated 25.08.2014 qua which it has been submitted on behalf of the appellant that the said application was not filed within time due to ill advice. The said submission cannot be accepted as it is apparent that there is a total callousness on behalf of the appellant in seeking redressal of any remedy.

The petition and CM.APPL.27541/18 are thus declined.

ANU MALHOTRA, J

JULY 16, 2018

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