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

+ RSA 138/2018

GEETA MEENA

..... Appellant

Through: Ms. Ellis Jana K.D. Ahuja, Adv.

Versus

PUNJAB NATIONAL BANK & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 18.09.2018

CM No.38288/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

RSA 138/2018 & CMs No.38286/2018 (for stay) & 38287/2018 (for condonation of 40 days delay in re-filing the appeal)

3. This appeal against the order dated [10th April, 2018 in RCA No.49/2017 Case ID No.DLST01-003849-2017] of dismissal of the First Appeal preferred by the appellant against the order dated [5th April, 2017 in CS No.04/2015 of the Court of Civil Judge-02 (South)] is accompanied with an application for condonation of 40 days delay in re-filing thereof and is listed subject to objection of the Registry as to the maintainability thereof.
4. Though the counsel for the appellant got the appeal listed by reiterating to the Registry that the appeal is maintainable and may be listed before the Court subject to office objection, but has not even looked into the aspect of maintainability.

5. Once, the Registry has raised an objection as to maintainability, the counsels ought not to lightly reiterate, without checking the law.
6. The order dated 5th April, 2017 of the Civil Judge was of dismissal as barred by time of an application filed by the appellant under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) for setting aside of the *ex-parte* decree dated 20th July, 2010 in CS No.04/2015 of the Court of Civil Judge-02 (South) in a suit filed by the respondent No.1/plaintiff against the appellant/defendant and the respondent No.2/defendant.
7. The appellant/defendant preferred a First Appeal against the aforesaid order and which has been dismissed vide the impugned order.
8. All First Appeals are not under Section 96 of the CPC. Section 104(1) read with Order XLIII of the CPC also provides for appeals against orders and Section 104(2) of the CPC provides that no appeal shall lie from any order passed in an appeal under that section.
9. The appeal is clearly misconceived and is dismissed.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 18, 2018

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