

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

+ **RFA No.690/2018**

% **24th August, 2018**

MAMTA KHURANA Appellant

Through: Mr. Chayan Sarkar, Advocate
(M. No.9911741110).

Versus

LAXMAN SINGH SOLANKI Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.33975/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.690/2018 and C.M. Nos.33974/2018(for condonation of delay) & 33976/2018(for ex-parte stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 11.4.2017 by which

trial court has decreed the suit for recovery of moneys filed by the respondent/plaintiff/Advocate with respect to litigation fees in the suit filed in the original side of this Court titled as ***Saminder Singh Reen Vs. Satya Khurana***, then the proceedings in the appellate side of this court, as also before the Supreme Court by filing an SLP, and finally in the execution proceedings.

3. At the outset, it has to be noted that the impugned judgment is an *ex-parte* judgment as the appellant/defendant did not file any written statement nor led any evidence. This Court is informed that the application under Order IX Rule 13 CPC was filed but the same was dismissed inasmuch as the appellant/defendant did not comply with the conditional order of deposit of amount.

4. This appeal is filed with a huge delay of 450 days and there is no reasonable cause for condonation of delay because except making self-serving averments that appellant/defendant was duped by her Advocate, it is not stated that what steps the appellant/defendant took to remain in touch with the Advocate during the pendency of the subject suit for recovery of moneys. Therefore in my opinion there is

no reasonable cause for condonation of delay, however in spite of the same, this Court has examined the case on merits.

5. The suit filed by the respondent/plaintiff was that he was a practicing lawyer and had represented the mother-in-law of the appellant/defendant in CS(OS) No.79/2012 titled as ***Saminder Singh Reen Vs. Satya Khurana***. The Advocate also further appeared in the appeals before the Division Bench of this Court and he also filed an SLP before the Supreme Court and lastly the respondent/plaintiff/advocate appeared in the execution proceedings. Amount claimed in the suit is towards the balance fees payable for the aforesaid proceedings. The respondent/plaintiff also at the request of the appellant/defendant had engaged the services of a Senior Advocate Mr. Vinay Garg and to whom the payment was to be made. The respondent/plaintiff pleaded that a payment of Rs.3,35,000/- was made, but there remained due a balance fees amount of Rs.13 lacs, and which was not paid. The appellant/defendant in part payment had handed over two cheques of Rs.1 lakh each which were dishonoured, and therefore the respondent/plaintiff had sent a Legal Notice dated 24.6.2015 which was replied to vide Reply dated 14/16.7.2015

admitting to the charges payable but claim was made that the entire payment was made. On account of the cheques of Rs.2 lacs having been dishonoured, complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed and which was settled for a sum of Rs.1.50 lacs, and which amount the appellant/defendant paid. The balance amount of Rs.11 lacs was not paid, hence the subject suit was filed for recovery of that amount alongwith interest totaling to the figure of Rs.12.65 lacs.

6. As already noted above, the appellant/defendant was *ex-parte* and such *ex-parte* proceedings against the appellant/defendant have become final on the dismissal of the application under Order IX Rule 13 CPC. It is seen that respondent/plaintiff has proved his case by stepping into the witness box and proving his case. The dishonoured cheques were proved as Ex.PW1/1 and Ex.PW1/2 along-with the dishonoured memos as Ex.PW1/3 and Ex.PW1/4. The Legal Notice dated 24.6.2015 was proved as Ex.PW1/5 along-with track report as Ex.PW1/7. Reply dated 14/16.7.2015 sent by the appellant/defendant was filed and proved as Ex.PW1/8. Proceedings before the Metropolitan Magistrate under Section 138 of the

Negotiable Instrument Act whereby for the amount of Rs.2 lacs settlement took place at Rs.1.50 lacs have been filed and proved as Ex.PW1/10. Consequently, in my opinion, trial court has rightly decreed the suit for recovery of the moneys being the balance fees due to the respondent/plaintiff.

7. Counsel for the appellant/defendant placed reliance upon the reply given by the appellant/defendant dated 14/16.7.2015 to argue that this reply shows that entire dues of the respondent/plaintiff were paid, however it is seen that in this reply while admitting the total due to be Rs.17.38 lacs, it was stated that all the due amounts were paid towards this amount essentially by cash except for three cheques. It is however noted that it is not the case of the appellant/defendant that while giving cash, any receipt was taken or any other document taken to show payment of this alleged cash payment. Therefore the contention on behalf of the appellant/defendant cannot be believed that entire dues of the respondent/plaintiff stand paid off and this is all the more so that if all the dues were paid off then where was the question of issuing two cheques of Rs.1 lakh each and which were dishonoured.

8. In view of the above, neither there is any merit in the application for condonation of delay nor in the appeal, and therefore, the appeal and all pending applications are dismissed.

VALMIKI J. MEHTA, J

AUGUST 24, 2018

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