

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

FAO 491/2016

VISHAL TANDON

..... Appellant

Through: Mr. Surinder Singh and Ms. Ravinder
Kaur, Advs.

versus

EON AVIATION PVT LTD

..... Respondent

Through: Mr. Mukesh Sharma, Mr. Shvansh
Gupta and Mr. Tarun Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

05.02.2018

The respondent entered appearance on 08.05.2017. No reply has been filed since then.

The learned counsel for the respondent states that he wants to address arguments without filing a reply.

This appeal impugns an order dated 22.07.2016 which has dismissed the appellant's application for restoration of the suit which was dismissed in default on 05.12.2014. His counsel contends that he had pursued his case for sometime; he had last appeared on 09.09.2014, when he had noted down the next date as 15.01.2015. However, the actual date was 05.12.2014 when in default of appearance, the case had been dismissed. When he reached the Court on 15.01.2015, he got to know about the dismissal of the case. Thereafter, an application for restoration was filed on 03.02.2015. However, it was not accompanied by an application for condonation of delay. This was fatal to his application for restoration, hence, the

Court dismissed it.

The learned counsel for the appellant submits that non-filing of the application was evidently a mistake committed by the appellant's lawyer for which the appellant should not be made to suffer precipitately and irreparably.

The Court is of the view that dismissal of the appellant's case because of default of his counsel and non-accompaniment of an application for condonation of delay with the restoration application, an evident error of his counsel, should not render the appellant irreparably remediless. If the appeal is allowed, his suit would be determined on merits. Adjudication on the basis of the merits of a case should be the preferred process and it would subserve the interest of justice. The inconvenience, if any, caused to the respondents can be compensated by imposing costs on the appellant. The reasons mentioned in the application do make out a case for restoration of the suit. It is not as if the appellant has defaulted in appearance consistently. On the contrary, he has persued his suit diligently but for the evident inadvertent lapse by his counsel, leading to dismissal, of the suit in default. The application for restoration was filed within 19 days of knowledge, but otherwise after 39 days from the limitation period. In the circumstances, the appeal is allowed. The impugned order is set aside and the delay of about 29 days in filing the application for restoration of the suit is condoned. The suit is restored to its original number subject to cost of Rs.30,000/- to the respondent and Rs.5,000/- to the Delhi Mediation and Conciliation Centre, Dwarka District Courts, New Delhi within two weeks from today.

List the main case before the Trial Court on 26.02.2018.

The appeal is allowed in the above terms.

NAJMI WAZIRI, J

FEBRUARY 05, 2018/acm